TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 508.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, ET AL., PLAINTIFFS IN ERROR,

vs.

CITY OF DETROIT, THE BOARD OF PUBLIC WORKS OF DETROIT, D. W. H. MORELAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED DECEMBER 13, 1900.

(17,993.)

(17,993.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 508.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, ET AL., PLAINTIFFS IN ERROR,

vs.

CITY OF DETROIT, THE BOARD OF PUBLIC WORKS OF DETROIT, D. W. H. MORELAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

INDEX.

	Original.	Print.
Transcript from the circuit court for the county of Wayne	1	1
Bill of complaint	1	1
Exhibit A—Letter of the property-owners to the mayor, September 6, 1898	7	6
Answer of City of Detroit *et al.*	9	8
Answer of Otto E. C. Guelich *et al.*	11	9
Amendment to bill of complaint	12	10
Order dissolving injunction	13	11
Amended answer of City of Detroit *et al.*	14	11
Amended answer of Otto E. C. Guelich *et al.*	15	12
Supplemental bill of complaint	18	14
Order *pro confesso*	21	17
Affidavit of Charles H. Campbell	22	17
Affidavit of Alexander Hamilton Sibley	23	18
Notice as to order *pro confesso*	24	18
Order setting aside order *pro confesso*	25	19
Answer of City of Detroit *et al.* to supplemental bill	26	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 24, 1901.

STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

To the circuit court for the county of Wayne, in chancery:

Your orators, The Cass Farm Company, Limited, a partnership association organized and existing under the laws of the State of Michigan; J. O. Harris, Bryant Walker, Jessie W. Radcliffe and Bryant Walker, administrator of the estate of Joseph A. Moross, deceased, on behalf of themselves and of any and all other persons interested in the subject-matter hereof and who may hereafter be joined as parties complainant herein, bring this their bill of complaint against the City of Detroit, the Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, all of Detroit, Michigan, and the Alcatraz Asphalt Paving Company, and respectfully show unto this court as follows:

1. That the complainants named herein are all residents of Detroit and owners of land lying and abutting upon Second avenue between Colburn place and the south line of the railroad.

2. It appears from the official records of the proceedings of the common council of the city of Detroit, that at the regular meeting held on the 12th day of July, 1898, a communication was received from the board of public works of said city recommending the paving of Second avenue from the end of the present pavement to the boulevard, but which did not specify the kind of pavement to be used; which said communication was accepted and a resolution offered by Alderman Marx that Second avenue be ordered graded and paved from the end of asphalt pavement to the railroad, with asphalt on concrete foundation, and that this action was to be under that clause of the city charter authorizing the common council to annually enter into contracts for grading, paving, etc., of streets, alleys and public places, the cost of which will not exceed in the aggregate $200,000, without the petition of the holders of the larger portion of the real estate directly abutting upon the portions of the street or alley proposed to be improved. That for the purpose of defraying the cost of said paving, the lots and parcels of real estate situated on said Second avenue embraced within said limits and fronting the portion of said avenue ordered to be improved by said paving should be constituted one local assessment district. That the city engineer should report to both the city assessor and the board of public works the quantities of material and work required for such pavement. That as soon as the board should receive this report of the city engineer, said board was thereby authorized to advertise five times for proposals for such pavement, in accordance with the resolutions and proceedings above provided and the provisions of the charter and ordinances of the city of Detroit. This resolution was referred to the city committee on streets.

3. That it further appears by the said official record of the proceedings of the said common council, that at its regular meeting,

held on August 23, 1898, a report of the said committee on streets was made to the said council, recommending the paving of said Second avenue from the end of the present asphalt pavement to the boulevard, and on motion of Alderman Knauss a resolution directing the board of public works to advertise for the paving of Second avenue from the end of the pavement to the boulevard, with asphalt on concrete foundation, was adopted by a vote of eighteen in favor of and ten against the said resolution.

4. It further appears from the said official records, that on August 30, 1898, a communication was received from his honor, the mayor, by the common council, returning, without his approval, the said resolutions. It also appears that at the same meeting the vote by which the resolutions were adopted was reconsidered by a unanimous vote of thirty-one. A motion for the adoption of the same notwithstanding the veto of the mayor, was then carried by a vote of twenty-four in favor to seven against the said adoption.

5. It further appears from the said official records, that supposedly in accordance with the terms of said resolutions and of the charter and ordinances of Detroit, said board of public works caused an advertisement to be made in the official paper for Detroit for proposals for the said paving, which said advertisement was as follows:

"Board of public works office.

"DETROIT, *August* 30, 1898.

"*Proposals for Paving and Repaving Streets.*

"Sealed proposals will be received at the office of the board of public works, Detroit, Michigan, until Tuesday, September 6, 1898, at ten o'clock a. m., local time, for furnishing all the labor and material for grading, paving and repaving, etc., the streets named below, within the limits mentioned, in the city of Detroit, with the style of pavement stated. Second avenue from the south curb line of Colburn place to the south line of the railroad, two roadways thirty feet wide, with sheet asphalt on concrete foundation, Medina, North River blue or Woolmith curbstone.

3 "The following are the estimates in detail of the work to be done on each of the above paving and repaving jobs:

"Second avenue.

"*Assessment Estimates.*

"Excavation, 4,699 cubic yards.

"Curbstone, new straight, 6,046.25 lineal feet.

"Curbstone, circular, 471.20 lineal feet, in 10 Medina circles, 15 feet radius.

"Retaining stone, 75 lineal feet, old Medina curb (furnished by city) may be used, set in concrete 6 inches deep and 8 inches wide.

"Paving, asphalt on concrete, 10,728.12 cubic yards.

"City Estimates.

"Excavation, 1,477 cubic yards.

"Curbstone, new straight, 478 lineal feet.

"Curbstone, circular, 326.56 lineal feet in 20 Medina circles, 10 feet radius, and 2 Medina circles, 4 feet radius.

"Paving, asphalt on concrete, 3,729.60 square yards.

"Retaining stone, 450.50 lineal feet, old Medina curb (furnished by city) may be used, set on concrete 6 inches deep, 8 inches wide."

6. It further appears from said official records that on the 9th day of September, 1898, a communication was received from the board of public works by the common council announcing that it had entered into a contract with the said Alcatraz Asphalt Paving Company, the lowest bidder for the said paving, and asking that said contract should be confirmed and approved. A resolution offered to the effect that it should be confirmed was objected to and laid on the table, but at a special meeting held September 10, 1898, said resolution was passed.

7. It further appeared from the said official records that on the 13th day of September, 1898, a communication was received from the mayor, returning the said resolution without his approval, which said communication was accepted, and on motion of Alderman Marx the vote by which the resolution was adopted was reconsidered by unanimous vote. Alderman Marx then moved the adoption of the resolution, notwithstanding the veto of the mayor. The motion of Alderman Marx then prevailed by a vote of twenty-six in favor of to six against the adoption of said resolution.

4 8. That the ordinance (Revised Ordinances of the City of Detroit, chap. 32, sec. 5, approved November 29, 1869, and as amended July 14, 1894) referred to in the said resolution in favor of the pavement of Second avenue, provides that the board of public works shall, as soon as they receive the report of the city engineer, proceed to advertise fifteen days, unless otherwise ordered by resolution of the common council, in the official city paper, for bids for the making of such improvements and the kind of pavement that shall have been directed to be advertised for by the common council and as required by the city charter, such advertisement to specify a time and place when and where such bids shall be opened, at which time and place such bids shall be opened by the board of public works in the presence of such persons as shall choose to attend, and the board shall then report to the council all bids received for each kind of pavement advertised for, designating the lowest responsible bidder. That no such advertisement as required by this section, specifying time and place where such bids should be opened, has been made by the said board of public works, but, on the contrary, only such advertisement as appears in paragraph 5 of this bill of complaint, specifying only that bids will be received by the board of public works until the 6th day of September, 1898, at ten o'clock a. m., city time.

9. That section 6 of said chapter 32 of the Revised Ordinances of the City of Detroit provides that on presentation of the report of

the board of public works in section 5 above provided, the common council may, by resolution, direct said board to contract with such of the lowest responsible bidders reported by the board as it shall see fit, or direct further advertisement for the same or different kinds of pavement, in its discretion, and then direct said board to contract with such lowest bidder for such kind of pavement as is deemed expedient to adopt for the improvement. Which said provision the board of public works has utterly disregarded, as will appear from the official report of the proceedings of the common council of September 9, 1898, when the communication was received by the common council from the said board of public works naming the lowest bidder and also stating that the board had already entered into a contract with the said lowest bidder and asking the approval and confirmation of the said common council. Yet, notwithstanding that the said section 6 expressly provides that the common council shall, after the board of public works has reported to the council all the bids received for each kind of pavement, direct said board to contract with such of the lowest bidders as it shall see fit, the said board of public works first contracted with the lowest bidder and then reported to the common council the one making such lowest bid.

5 10. That it is expressly provided by section 33, chapter 11, of the charter of the city of Detroit, that in the case of every contract for paving, the work to be performed thereunder shall be commenced and completed between the first day of May and the first day of November in each year. That it is impossible that the said paving of Second avenue from Colburn place to the railroad crossing should be completed in the short space of time between now and the first of November.

11. That on the 13th day of August, 1898, communications were given to the committee on streets of the common council, and also to the city clerk of Detroit, signed by your orators, The Cass Farm Company, Limited, the owners of 1,600 feet on the west side of said Second avenue, being the entire west side of said avenue between Colburn place and the railroad track, and 130 feet on the east side of said avenue, J. O. Harris and others, in which your said orators expressly protested against the paving of Second avenue above Colburn place, on the grounds that asphalt had not been sufficiently tested to prove its value as a pavement; that it is very costly, requiring almost constant repairs; that it is noisy and dusty, and that its durability is a matter of question. Your orators represent the entire west side of said Second avenue between Colburn place and the railroad, and 592 feet on the east side of Second avenue.

12. Further, that a communication signed by your orators, The Cass Farm Company, Limited, J. O. Harris, William Craig, Mrs. D. McDonnell, Mrs. Robert Oakman, Walter Fairbairn, John M. O'Connor, S. A. Buchanan, Lucy M. Arnold, James Arnold, P. T. O'Connor, Moross Estate, H. M. Parmalee, Walker & Radcliffe, and James E. Jacklin, all owners of property situated on Second avenue between Colburn place and the boulevard, was presented to his honor, the mayor, on September 6, 1898, commending his action in vetoing

the said contract and protesting against the paving of said Second avenue with asphalt, a copy of which is hereto attached and made a part hereof (marked Exhibit "A").

13. Your orator further avers, on information and belief, that the said Alcatraz Asphalt Paving Company has begun and is proceeding with the work of grading, paving, and excavating under the said contract before mentioned in this bill.

Wherefore your orators pray:

(1.) That the bid of the defendant Alcatraz Asphalt Paving Company, described in this bill, and the contract made in pursuance thereof between the defendants City of Detroit and the defendants Members of the Board of Public Works on the one part and the defendant Alcatraz Asphalt Paving Company on the other, be declared null and void, as having been made and entered into in contravention of the provisions of law and the Revised Ordinances of said city.

6 (2.) That all the defendants named herein be perpetually enjoined from the execution and carrying out of said contract and from doing any work thereunder.

(3.) That a preliminary injunction be issued restraining all the defendants from executing and carrying out the said contract or from doing any work thereunder until the further order of this court.

(4.) May it please the court, the premises being considered, to grant to your orators the writ of subpœna to be issued out of and under the seal of this court, to be directed to the said City of Detroit, The Board of Public Works, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich and The Alcatraz Asphalt Paving Company, defendants herein, thereby commanding them, and each of them, on a certain day and under a certain penalty to be therein inserted, personally to be and appear before this court, then and there to answer all and singular the said premises, but not under oath (answer under oath being hereby expressly waived), and to stand to, abide and perform such order and decree as this court shall make therein and as shall be agreeable to equity and good conscience.

(5.) And that your orators may have such other, further and different relief in the premises as shall be agreeable to equity and good conscience.

And your orators will ever pray.

CASS FARM CO., LTD.
CHARLES A. RATHBONE,
Ass't Sec'y.

J. O. HARRIS,
BRYANT WALKER,
JESSIE W. RADCLIFFE,
BRYANT WALKER,
Administrator of the Estate of Joseph A. Moross, Deceased,
By RUSSEL & CAMPBELL,
Their Solicitors.

RUSSEL & CAMPBELL,
Solicitors and of Counsel for Complainants.

STATE OF MICHIGAN, }
County of Wayne, } ss:

Charles A. Rathbone, being duly sworn, deposes and says that he is assistant secretary of the Cass Farm Company, Limited; that he has read the foregoing bill by it subscribed and knows the contents thereof, and that the same are true except as to such matters as are therein stated upon information and belief, and as to such matters he believes them to be true.

CHARLES A. RATHBONE.

Sworn to and subscribed before me this 26th day of September, 1898.

HARRY C. BULKLEY,
Notary Public, Wayne County, Michigan.

7 EXHIBIT "A."

DETROIT, MICH., *Sept.* 6, 1898.

To the Honorable W. C. Maybury, mayor of the city of Detroit.

SIR: The undersigned, representing the ownership of all the property on the west side, and all excepting a very few feet on the east side, of that portion of Second avenue proposed to be paved with asphalt, respectfully commend your action in vetoing the resolution of the common council directing the contract for such pavement to be made.

We regret that the council disregarded the forcible and unanswerable reasons which were given in your message. We understand that the contract, if made, must have your approval, and we respectfully petition that you will continue to maintain your position in behalf of the property-owners interested and the best interests of the city by vetoing the contract. We believe that, in view of the situation as it has now become publicly understood, your action in disapproving the contract will be upheld.

There is no necessity for such pavement. The property is outlying property, with a long stretch completely and expensively paved, the burden of which has been borne by the property-owners, and the property has not yet been built up. There is no necessity for the pavement of this portion of the street to furnish a thoroughfare to the country beyond. Woodward avenue, Cass avenue and Greenwood avenue furnish as convenient access to the property beyond the boulevard as can be reasonably demanded.

Asphalt pavement is an experiment yet in this city, and the experience thus far as to its convenience and durability does not argue in its favor; and, in view of the great expense of such a pavement placed in front of undeveloped property, as the tract in question is, it would be an act of the grossest injustice to impose the burden upon the property-owners at this time; and in prospect of the separation of the grades at the important crossings of the railroad track, it would be extravagant at this time to do work at a grade which must of necessity be changed within a short time.

There is no public demand for the pavement, and any citizen viewing the property and inspecting its present use and the development of that neighborhood will fully agree with your honor that there is no need for the paving of that portion of the street.

8 We fully agree with your honor's contention that under the provisions of the Detroit charter, whereby the first paving of the street is paid for by the abutting owners and subsequent maintenance and repair rests upon the city, the dictation of property-owners along a portion of the street which of necessity should be paved, should not be submitted to; but it has always been the custom to pay a reasonable regard to their views, and, as a matter of right, the views of the owners of more than nineteen-twentieths of the front on that portion of the street which is proposed to be paved should receive respectful consideration. In this case the owners of the property on the street in question are not asking for it; the people living east and west of the street are not asking for it; the fire department are not asking for it; the school board are not asking for it; the police department are not asking for it; the health board are not asking for it; over nineteen-twentieths of the owners are protesting against it, and the only influence which is pressing the project is one which should not be regarded.

Yours truly,

CASS FARM CO., LTD.,	1,600	feet, west side.
CHAS. A. RATHBONE, *Ass't Sec'y*,	130	" east side.
J. O. HARRIS,	120	"
WM. CRAIG,	200	"
MRS. D. McDONNELL,	34	"
MRS. ROBERT OAKMAN,		
WALTER FAIRBAIRN,	60	"
JOHN M. O'CONNOR,	40	"
S. A. BUCHANAN,	80	"
LUCY M. ARNOLD,	100	"
JAMES ARNOLD,	240	"
P. F. O'CONNOR,	40	"
MOROSS ESTATE,		
BRYANT WALKER, *Trustee*,	302	"
M. M. PARMALEE,		
By BRYANT WALKER,	40	"
WALKER & RADCLIFFE,	40	"
JAMES E. JACKLIN,	40	"

9 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, Jesse W. Radcliffe, Bryant Walker, Administrator,

vs.

THE CITY OF DETROIT, D. W. H. MORELAND, H. KALLMAN, James W. Millen.

The answer of the defendant-, The City of Detroit, D. W. H. Moreland, H. Kallman, and James W. Millen, to the complainants' bill of complaint.

First. They admit paragraphs one, two, three, four, five, six, seven, eight, eleven, twelve and thirteen of said bill of complaint.

Second. They deny that the board of public works has disregarded or violated sections five and six of chapter 32 of the Revised Ordinances of the City of Detroit, as alleged in paragraph nine of said bill of complaint.

Third. They deny that it is impossible to complete the grading and paving of Second avenue from Colburn place to the railroad crossing before the first of November next, as alleged in paragraph 10 of said bill; on the contrary, they aver that said work will be completed before said time, unless prevented by the injunction of this court.

They aver further that the contract for grading and paving said street provides that the work shall be completed on or before October 31st, 1898. The contractor further agreed to keep the said pavement on Second avenue in good repair for ten years from and after its completion, and has given a good and sufficient bond for the faithful performance of these as well as other conditions of said contract and to pay all damages which may be caused on account of any failure to complete said work within the time limited.

Said contract further provides that the contractor shall forfeit twenty-five dollars for each and every day that said work remained uncompleted after the said 31st day of October.

10 Fourth. These defendants aver that for many years the board of public works has advertised for bids to perform public work in the manner and substantially in the terms of the advertisement set forth in paragraph five of said bill of complaint.

That the office of the board of public works is a public office, and is well known to the public as the place where such bids tendered to the board of public works are always opened. They aver further that on Tuesday, September 6th, 1898, at ten o'clock a. m., local time, the bids for grading and paving Second avenue were publicly opened by the board of public works at its public office and in the presence of all who desired to attend. That it was well known by the public, and especially by all who desired to make tenders that said bids would be opened at said time and place in accordance with the invariable custom of said board. That on Friday, September 9th, said board reported to the common council all the bids received for

the pavement advertised for and designated the lowest responsible bidder.

Fifth. These defendants deny that complainants will in any way be injured by the making of said public improvement, but, on the contrary, will be greatly benefited, and, therefore, they have no standing in a court of equity.

THE CITY OF DETROIT,
By CHAS. FLOWERS,
Corporation Counsel.
D. W. H. MORELAND,
H. KALLMAN, AND
JAMES MILLEN,
By CHAS. FLOWERS,
Corporation Counsel.

CHAS. FLOWERS,
Solicitor for said Defendants.

11 In the Circuit Court for the County of Wayne. In Chancery.

The separate answer of Otto E. C. Guelich and the Alcatraz Asphalt Paving Company to the bill of complaint of the Cass Farm Company, Limited; J. O. Harris, Bryant Walker, Jessie W. Radcliffe, and Bryant Walker, administrator of the estate of Joseph Moross, deceased, complainants, against the City of Detroit, the Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, and these defendants.

These defendants, saving and reserving all manner of benefit of exception to the complainants' bill of complaint, answering, say that they deny that it is impossible that the said paving of Second avenue from Colburn place to the railroad crossing should be completed in the space of time between now and the first of November, and they aver that it is possible to complete said paving within such time.

These defendants are advised and respectfully submit that the said complainants have not by their bill of complaint made such a case as entitle them to any relief in a court of equity, and they claim the benefit of a demurrer to said bill of complaint.

Wherefore these defendants pray that they may be dismissed with their reasonable costs and charges.

OTTO E. C. GUELICH,
ALCATRAZ ASPHALT PAVING COMPANY,
By JOHN J. SPEED, *Its Solicitor.*

JNO. J. SPEED,
Solicitor and of Counsel for Def'ts O. E. C. Guelich and Alcatraz Asphalt Paving Co.

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this 28th day of September, 1898, before me personally appeared Otto E. C. Guelich and made oath that he had read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge.

ROBERT T. SPEED,
Notary Public, Wayne County, Michigan.

12 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED, ET AL., Complainants, vs. THE CITY OF DETROIT ET AL., Defendants. } Amendment to Bill of Complaint.

23. Your orator further shows that prior to the adoption of the resolution mentioned in the second paragraph of this bill, no detailed estimate of the cost of the proposed improvement was reported to or furnished the common council, as required by sec. 12, chap. 15, of the charter of the city of Detroit; and, as your orator is informed and believes, and charges, no plans or specifications of the proposed improvement were prepared prior to the adoption of said resolution by the board of public works or approved by the common council; nor had the matter of the proposed improvement been referred in any manner whatsoever by said common council to said board of public works.

CASS FARM CO., LIMITED.
CHARLES A. RATHBONE, *Ass't Sec.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

Charles A. Rathbone, being duly sworn, deposes and says, that he is assistant secretary of the Cass Farm Company, Limited; that he has read the foregoing amendment and knows the contents thereof, and that the same is true except as to such matters as are therein stated upon information and belief, and as to such matters he believes it to be true.

CHARLES A. RATHBONE.

Subscribed and sworn to before me this 29th day of September, 1898.

HARRY C. BULKLEY,
Notary Public, Wayne County, Michigan.

13 At a session of the circuit court for the county of Wayne, held at the court-rooms, in the city of Detroit, on the 3rd day of October, 1898.

Present: Hon. William E. Grove, circuit judge.

THE CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT Walker, Jessie W. Radcliffe, and Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased, Complainants,

vs.

THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS OF THE City of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company, Defendants.

A motion having been made that the injunction issued herein be dissolved, and the same having been argued by counsel for the respective parties, it is now, on motion of John J. Speed, solicitor for the defendants Otto E. C. Guelich and The Alcatraz Asphalt Paving Company, ordered that the injunction issued herein be dissolved and vacated. It is further ordered that the said last-named defendants do recover from said complainants ten dollars, the costs of said motion.

WILLIAM E. GROVE,
Circuit Judge.

14 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne.

CASS FARM COMPANY, LIMITED, ET AL.

vs.

THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS, ET AL.

Amended Answer.

The defendants The City of Detroit, The Board of Public Works, D. W. H. Moreland, H. Kallman, James W. Millen, for answer to the paragraph amending the complainants' bill of complaint, and for amendment to their answer heretofore filed herein, say:

First. That on July 12th, 1898, the board of public works of the city of Detroit sent to the common council the following communication:

To the honorable the common council:

GENTLEMEN: The board of public works in recommending the paving of Second avenue from the end of the present asphalt to the boulevard under the $200,000 clause of the charter, has in view the following facts: There exists a strong necessity for the paving of the street because the paving now on the street ends at a dirt street; also for the reason that it is the only north and south street in that part of the city which runs directly to the boulevard, with the exception of Woodward avenue itself, with its double line of street-car tracks, and for the further reason that a great many prominent

property-owners on Second avenue ask to have it paved with asphalt from the end of the present asphalt to the boulevard.

The remainder of Second avenue is now paved with asphalt; and this portion proposed to be paved will have double roadways and the spaces between may be beautified and made into parks.

The city is about to open Second avenue north of the boulevard at great expense, and the new Central high school is already located on the same street, and the board believes that the imperative necessity for this improvement will be apparent to all.

For these reasons the board recommends the paving of the street as indicated above.

Estimated cost, $40,000.

Respectfully submitted.

D. W. H. MORELAND.
JAMES W. MILLEN.
THE CITY OF DETROIT,
By CHARLES FLOWERS,
Corporation Counsel.
D. W. H. MORELAND,
H. KALLMAN, AND
JAMES MILLEN.
By CHARLES FLOWERS,
Corporation Counsel.

CHAS. FLOWERS,
Solicitor for said Defendants.

15 In the Circuit Court for the County of Wayne. In Chancery.

The amended answer of Otto E. C. Guelich and The Alcatraz Asphalt Paving Company to the bill of complain*ant* of The Cass Farm Company, Limited; J. O. Harris, Bryant Walker, Jessie W. Radcliffe, and Bryant Walker, administrator of the estate of Joseph A. Moross, deceased, complainants, against The City of Detroit, The Board of Public Works of the City of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, and these defendants.

These defendants, for answer to the paragraph amending the complainants' bill of complaint and for amendment to their answer heretofore filed herein, say:

That on July 12th, 1898, the board of public works of the city of Detroit sent to the common council the following communication:

To the honorable the common council:

GENTLEMEN: The board of public works, in recommending the paving of Second avenue from the end of the present asphalt to the boulevard, under the $200,000 clause of the charter, has in view the following facts: There exists a strong necessity for the paving of the street, because the paving now on the street ends at a dirt street; also for the reason that it is the only north and south street in that part of the city which runs directly to the boulevard, with the exception of Woodward avenue itself, with its double line of street-

car tracks, and for the reason that a great many prominent property-owners on Second avenue ask to have it paved with asphalt from the end of the present asphalt to the boulevard.

The remainder of Second avenue is now paved with asphalt, and this portion proposed to be paved will have double roadways, and the spaces between may be beautified and made into parks.

The city is about to open Second avenue north of the boulevard at great expense, and the new Central high school is already
16 located on the same street, and the board believes that the imperative necessity for this improvement will be apparent to all.

For these reasons the board recom-ends the paving of the street as indicated above.

Estimated cost, $40,000.

Respectfully submitted.

D. W. H. MORELAND.
JAMES W. MILLEN.

These defendants further say that specifications had been duly prepared by the board of public works for asphalt paving and which were duly approved by the common council long prior to the 12th day of July, 1898, and the terms thereof were well known to the common council and others having any interest therein. The said specifications were referred to in the advertisement for bids made by the board of public works, a copy of a part of which is annexed to said bill of complaint, in connection with the description of the work to be done, and bid- were solicited for performance of the work in accordance with said specifications, and a copy of the same specifications *are* annexed to the contract as part thereof which was confirmed by the common council.

These defendants further say that on the day and at the time named in said advertisement, to wit, September 6th, 1898, at ten o'clock a. m., the board of public works met and opened all bids in pursuance of said advertisement. Said meeting was held at the office of the board and the bids were opened in the presence of the bidders or their agents and such other persons as were pleased to be present at such time. The amounts respectively bid and the names of all the bidders were communicated by the board to the common council at the same time the contract was submitted to it for confirmation.

OTTO E. C. GUELICH,
ALCATRAZ ASPHALT PAVING COMPANY,
By JOHN J. SPEED, *Solicitor.*

JOHN J. SPEED,
Solicitor for Defendant- Guelich and Alcatraz Asphalt Paving Co.

17 STATE OF MICHIGAN, } ss:
County of Wayne, }

D. W. H. Moreland, being duly sworn, says that he is the president of the board of public works of the city of Detroit, and that he has read the foregoing answer, and that the same is true of his own knowledge, except as to matters alleged to be upon information and belief, and as to them he believes it to be true.

D. W. H. MORELAND.

Subscribed and sworn to before me this seventh day of October, 1898.

ROBERT Y. OGG,
Notary Public, Wayne County, Mich.

18 *Supplemental Bill of Complaint.*

STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED, ET AL. }
vs. } No. 19631.
THE CITY OF DETROIT ET AL. }

Your orators, The Cass Farm Company, Limited, J. O. Harris, Bryant Walker, Jessie Radcliffe and Bryant Walker, administrator of the estate of Joseph A. Moross, deceased, complainants in the above-entitled cause, file their supplemental bill therein, in order that the proceedings taken subsequently to the filing of the original bill in the matter of the paving and grading of Second avenue between the south curb line of Colburn place and the south line of the railroad crossing, and the assessment levied against the abutting property owners for the purpose of defraying the expenses of the same, may be brought to the notice of the court, and respectfully show unto the court:

1. That the original bill of complaint was filed in this cause on the 26th day of September, 1898. That a preliminary injunction restraining the contractors and board of public works from continuing work under the contract for the said paving, was issued on the same date. That on the 30th day of September, 1898, a motion to dissolve the preliminary injunction was argued, and that on October 3rd of the same year an order was entered dissolving the said injunction.

2. That it is expressly provided by section 8 of chapter 32 of the Revised Ordinances of the City of Detroit, that after the board of assessors shall have made a list of the property in the local assessment district established by the common council, and after the said list shall be confirmed by the council, they shall proceed to the confirmation of such assessment, and upon the confirmation of such assessment-roll the city clerk shall deliver the same to the controller. That further, in section 9 of the same chapter it is provided that the

controller, upon the receipt of said assessment-roll by the last section provided, shall make the necessary entries in his books as required by the charter and ordinances, and may retain the same in his office in his discretion, until work under the contract which shall
19 have been made, is commenced. He shall at the same time, or at such time previous to the commencement of the work as he shall deem expedient, deliver such assessment-roll to the receiver of taxes, and thereafter such proceedings shall be taken thereupon as are provided in the charter and ordinances for the collection of special assessments.

3. Your orators further show that in direct contravention to the directions expressed in said sections 8 and 9, the said assessment-roll was not delivered to the controller by the city clerk, but was delivered by the board of assessors to the controller, and this not until after the work under the contract for paving had been completed. That the receiver of taxes did not, at the time at which the work was commenced, or at any time previous to the commencement of the work, receive from the controller the said assessment-roll, as expressly provided for in said section 9.

4. Your orators further show that on the 3rd day of January, 1899, the board of public works sent a report to the common council that the paving of Second avenue under the contract confirmed the 10th day of September, 1898, was fully completed from the south curb line of Colburn place to the south line of the railroads. That the pavement was of asphalt on concrete and had been examined by the board of public works and had been found to be in accordance with the contract and specifications for the same, further stating the amount due the contractor for paving said avenue; which said report was accepted, and by unanimous consent a resolution was offered that the paving within the limits above mentioned be accepted and that the controller be authorized to draw his warrant in payment of said work, and that the said controller be directed to prepare bonds to defray the expenses of the same, which said resolution was unanimously adopted by the said common council.

5. Your orators further aver that the laying of foundation and the paving of Second avenue was not in accordance with the said contract; that the said contract called for the completion of said work by the first day of November, A. D. 1898 (as required by section 33 of chapter 11 of the charter of the city of Detroit), which said work was not completed until the latter part of December in the same year. That the time for the completion of said contract was never extended by the common council; that the concrete foundation was wholly insufficient, being poorly laid, and that the work was done during the cold weather in winter, at a time when said work could not properly be completed; that the said asphalt laid on said concrete foundation is uneven, rough, and totally unfit for such pavement, and should not have been accepted by the said board of public works.

20 6. Your orators further show that the contract under which the said pavement was attempted to be laid provided that the contractor excavate a trench twelve inches wide on each side of

and beyond the line of the roadway, to the depth of twenty-four inches below the established grade. The bottom of the trench to be smoothly trimmed parallel to the curb grade, and to have laid therein a continuous line of well-burned four-inch tile, to be well connected, to the receiving basins. That this provision has been only partially and in nowise adequately carried out by the said contractor.

7. Your orators further show that on the 18th day of January, 1899, they received a notice from the receiver of taxes of the city of Detroit, notifying them of an assessment levied against them for this said pavement. That section 9 of chapter 6 of the Revised Ordinances of Detroit, provides that the receiver of taxes shall collect all special assessments imposed and levied by the common council, and after the expiration of thirty days from the time of the acceptance of the work for which each roll is made, he shall have authority, and it shall be his duty to collect the sums imposed upon every assessment-roll placed in his hands.

Wherefore your orators pray:

(1st.) That they may be granted the relief prayed for in sections 1, 2, 3 and 4 of the original bill filed in this cause.

(2nd.) That the assessment levied against them for the pavement of the said portion of Second avenue from the south curb line of Colburn place to the southerly line of the railroads be declared null and void:

(*a.*) Because the directions and provisions prescribed by the charter and revised ordinances of the city of Detroit have not been carried out.

(*b.*) Because the contract for the said paving of Second avenue has not been fulfilled.

(3rd.) That your orators may have such other or further and different relief in the premises as may be agreeable to equity and good conscience.

And your orators will ever pray.

CASS FARM COMPANY, LIMITED.
J. O. HARRIS,
BRYANT WALKER,
JESSIE RADCLIFFE,
BRYANT WALKER,
Administrator of the Estate of Joseph A. Moross, Deceased,
By RUSSEL & CAMPBELL,
Their Solicitors.

RUSSEL & CAMPBELL,
Solicitors for Complainants and of Counsel,
604 *Union Trust Building.*

21 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, Jessie W. Radcliffe, and Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased,

vs.

CITY OF DETROIT, BOARD OF PUBLIC WORKS OF DETROIT, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and Alcatraz Asphalt Paving Co.

On filing due proof of personal service of the supplemental bill of complaint in the above-entitled cause on all of the defendants therein by giving the same to their solicitors, and it appearing by proof that said defendants have not answered, pleaded, or demurred, on motion of Russel & Campbell, solicitors for the complainant, it is—

Ordered that the supplemental bill of complaint filed in this cause be, and the same is hereby, taken as confessed by all of said defendants.

RUSSEL & CAMPBELL,
Solicitors for Complainants.

Dated June 15th, 1899.

22 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, Jessie W. Radcliffe, and Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased,

vs.

CITY OF DETROIT, BOARD OF PUBLIC WORKS OF DETROIT, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and Alcatraz Asphalt Paving Company.

STATE OF MICHIGAN, } *ss:*
County of Wayne, }

Charles H. Campbell, being duly sworn, deposes and says that he is a member of the firm of Russel & Campbell, solicitors for the complainants in this cause; that no plea, answer, or demurrer to the supplemental bill of complaint has been served in this cause upon said Russel & Campbell by or on behalf of any of the defendants herein, and this deponent verily believes that no such plea, answer, or demurrer has been filed herein by any of said defendants.

CHARLES H. CAMPBELL.

Sworn to and subscribed before me this fifteenth day of June, 1899.

ALEXANDER HAMILTON SIBLEY,
Notary Public, Wayne County, Michigan.

23 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, Jessie W. Radcliffe, and Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased,

vs.

CITY OF DETROIT, BOARD OF PUBLIC WORKS OF DETROIT, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and Alcatrac Asphalt Paving Company.

STATE OF MICHIGAN, } ss:
County of Wayne, }

Alexander Hamilton Sibley, being duly sworn, deposes and says that on the 15th day of February, 1899, he served a copy of the supplemental bill of complaint filed in this cause upon C. D. Joslyn, solicitor for the City of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, and Board of Public Works, by leaving the same with Charles Flowers, and that on the same day he further served a copy of said supplemental bill upon John J. Speed, solicitor for Otto E. C. Guelich and the Alcatraz Asphalt Paving Company, by leaving the same with the clerk in charge of the office of said Speed.

ALEXANDER HAMILTON SIBLEY.

Sworn to and subscribed before me this 15th day of June, 1899.

PERCY J. FARRELL,
Notary Public, Wayne County, Michigan.

24 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED, ET AL.
vs.
CITY OF DETROIT ET AL.

To Charles D. Joslyn and John J. Speed, solicitors for defendants:

You will please take notice that the within is a true copy of an order *pro confesso* to the supplemental bill of complaint this day entered in the above-entitled cause and of the affidavit upon which the same is based.

RUSSEL & CAMPBELL,
Solicitors for Complainants.

Detroit, Mich., June 15th, 1899.

25 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, Jessie W. Radcliffe, Bryant Walker, Adm'r,
vs.
THE CITY OF DETROIT, D. W. H. MORELAND, H. KALLMAN, JAMES W. Millen.

At a session of said court, held at the court-room, in the city of Detroit, in said county, on the 18th day of January, 1900.

Present: Hon. Morse Rohnert, circuit judge.

The parties in the above-entitled cause appearing in open court, by their solicitors, and the latter agreeing thereto—

It is hereby ordered that the order *pro confesso* to the supplemental bill of complaint, hereto-entered in said cause, be, and the same is hereby, set aside as against the City of Detroit and the above-named Members of the Board of Public Works, with ten dollars costs.

____ ____,
Circuit Judge.

26 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LTD.; J. O. HARRIS, BRYANT WALKER, JESSE W. Radcliffe, Bryant Walker, Adm'r,
vs.
THE CITY OF DETROIT, D. W. H. MORELAND, H. KALLMAN, JAMES W. Millen.

The answer of the defendants, The City of Detroit, D. W. H. Moreland, H. Kallman, and James W. Millen, to complainants' supplemental bill of complaint.

1. These defendants admit the allegations contained in paragraphs 1 and 2 of said supplemental bill of complaint, but deny that they are in any way material to the issue in said cause.

2. These defendants admit the allegations contained in paragraphs 4 and 7 of said supplemental bill of complaint.

3. These defendants deny the allegations contained in paragraphs 3, 5 and 6 of said supplemental bill of complaint.

4. These defendants claim the benefit of a demurrer to paragraphs 3, 5 and 6 of said supplemental bill of complaint, the same as if they had been herein specially demurred to.

THE CITY OF DETROIT,
By CHAS. FLOWERS,
Corporation Counsel.
D. W. H. MORELAND,
H. KALLMAN,
JAMES M. MILLEN,
By CHAS. FLOWERS,
Corporation Counsel.

CHAS. FLOWERS,
Solicitor for said Defendants.
Detroit, January 17th, 1900.

27 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED, ET AL.
vs.
CITY OF DETROIT ET AL.
} No. 19631. Amendment to Bill of Complaint.

Now come the complainants and amend their bill of complaint heretofore filed in said cause by adding thereto the following paragraph:

14. Your orators further aver that the provisions of the charter of the city of Detroit and the paving ordinances of said city, in so far as the same provide for an assessment of the cost of paving upon the abutting property in proportion to the frontage of such property, are in violation of the Constitution of the United States and the amendments thereof, and therefore null and void.

RUSSEL & CAMPBELL,
Solicitors for Complainants.

Business address: 604 Union Trust building, Detroit, Michigan.

28 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM CO., LIMITED, ET AL.
vs.
CITY OF DETROIT ET AL.

It is hereby stipulated by and between the parties to the above-entitled cause, by their respective solicitors, that William Craig, Alice C. Hutton, James Craig, Jr., and Helen C. Fry, who claim to own property upon Second avenue which is subject to the assessment sought to be set aside by the complainants in this cause, be joined as parties complainant in the proceedings in the above-entitled cause as they at present stand.

Dated March —, 1899.

JOHN J. SPEED,
Solicitor for Otto E. C. Guelich and the Alcatraz Asphalt Paving Company.
CHAS. FLOWERS,
Solicitor for City of Detroit.

29 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY (LIMITED) ET AL., Complainants,
vs.
THE CITY OF DETROIT ET AL., Defendants.

By MORSE ROHNERT, *Circuit Judge:*

In this matter in the original bill relief was asked for against the paving of Second street from Colburne place to the railroad cross-

ing, as ordered by the common council of the city of Detroit, and in the supplemental bill filed relief was asked from payment of the assessment made against complainants for the paving of said street.

A number of objections were made to the proceedings taken to bring about the pavement, and eventually resulting in the pavement and the assessment for the same.

One objection to the pavement was made to the condition of the pavement as laid. I fail to be convinced from the testimony that the present condition of the asphalt pavement on said street differs much from the condition of other asphalt pavements laid, and I am not convinced that it is not a satisfactory pavement.

Of the other objections made I shall consider but the one, as I think that that objection alone entitles the complainants to the relief prayed for.

30 The objection is this, that the board of public works in advertising for proposals for the said pavement had failed in said advertisement to specify the time and place the bids would be opened, as required by the provisions of the ordinances of the city of Detroit. These provisions are clear and distinct, and were made for the purpose of avoiding juggling with bids, and I consider them equally binding upon the board of public works and upon the common council of the city of Detroit, the common council being, under the charter, required to give their final approval to the contract for the pavement.

The question here is whether these provisions are directory or mandatory. If this court hold the same directory it would leave it optional with the board of public works to specify the time and place of opening of the bids in advertising for bids. This would permit a condition of things which the ordinance intended to avoid, and, to my mind, a condition of things which should be avoided. I cannot therefore place such a construction upon the requirements of the ordinance which would leave it in the power of the board of public works to open bids at such time and place as they saw fit, without the knowledge of the people who are interested in the pavement and who must be called upon to pay for the same.

The purpose of the requirements of the ordinance are so important that they must be considered mandatory. Being mandatory, any proceedings taken subsequent to the resolution of the common council directing that said improvements shall be undertaken, and commencing with the advertising for proposals for doing the work incident to said improvements, are without force and effect.

I therefore grant the relief prayed for in the supplemental bill, and make the injunction restraining the collection of any assessment for said work permanent.

31 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

CASS FARM COMPANY, LIMITED, ET AL.
vs.
THE CITY OF DETROIT ET AL.

This cause coming on for hearing upon pleadings and proofs, evidence was given on the part of the complainants tending to show that after the making of the contract set up in the bill of complaint a copy of which is hereto attached, the work of paving Second avenue was nominally begun under the contract, September 28th, 1898. The distance to be paved between Colburn avenue and the railroad track was about half a mile. Up to the first day of November the only work which had been done upon the street was the concreting of about two blocks upon one side of the street. The remainder of the concreting was finished and all of the asphalt work done after the 1st day of November, the work being completed and accepted January 3rd, 1899. During the time when this work was done the weather was generally cold, the temperature each day from November 1st to January 3rd, 1899, being shown by the table hereto attached, the report of the United States Weather Bureau. During a part of the time the weather was so cold that the work had to be suspended, and at times was carried on during only a few hours of each day when the weather became sufficiently warm to permit the laying of the concrete.

The effect of cold weather upon concrete is to prevent its setting properly, and the effect of laying asphalt in cold weather is that if it happens to get chilled it forms in lumps and is harder to work. The pavement, when finished, was wavy and irregular, so that water stood in places upon it after heavy rains; and it was cracked in many places.

No authority was obtained from the common council extending the time for completing the pavement after the 1st of November, and the board of public works did not exact from the contractor the penalty of twenty-five dollars per day provided for in the contract and specifications under which the pavement was laid.

The territory included in the contract is all vacant property, upon both sides of the street, with the exception of three houses built along the street. About the time the pavement was completed and before an assessment was spread the complainant served in addition to the notices shown in the bill of complaint, a notice, a copy of which is hereto attached, marked Exhibit "C."

32 The city clerk received the assessment-roll for said paving from the board of assessors on January 3rd, 1899; and probably on that same day it was delivered to the controller, and was delivered by him to the receiver of taxes on January 11th, 1899.

Evidence was given on the part of the defendant tending to show that no concrete was laid when the weather was below freezing, and that the asphalt and concrete were properly laid. That the effect of cold weather upon the work of laying asphalt was to make it harder

work and more expensive to lay it. Also evidence tending to show that the work was finished as called for by the specifications and in accordance therewith.

Also testimony of Robert Y. Ogg, secretary of the board of public works, tending to show that the bids or proposals for paving Second avenue were opened in the office of the board of public works at ten o'clock a. m., local time, on September 5th, 1898, in public, and in the presence of those who had tendered bids, that being the time mentioned as the hour up to which bids would be received. It had always been the custom of the board to open the bids at the hour named; as a rule every man who puts in a bid is present at the opening.

This was corroborated by D. W. H. Moreland, who was at the time of opening the bids relating to the Second Avenue paving a member of the board.

John McVicar was connected with the board as secretary and commissioner from September, 1890, until February, 1898; he also testified to the custom of the board, which was that the hour named as the limit when bids were received was always treated by the board as the hour for opening bids; and that the contractors and builders knew of such custom, and it was their custom to be present at such time. That occasionally, when a commissioner was late, or for some other reason, a motion would sometimes be made to postpone the opening for a few minutes. Whenever this was done it was done publicly and the people present were notified when the bids would be opened.

The foregoing is hereby certified to be substantially the testimony taken on the hearing of said cause. This certificate is made in pursuance of the statute to enable the defendants to appeal from the decree herein.

Dated at Detroit, Mich., this 3rd day of March, 1900.

MORSE ROHNERT,
Circuit Judge.

33 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT Walker, Jesse W. Radcliffe, and Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C. Fry, and S. A. Buchanan, Complainants,

vs.

THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company, Defendants.

At a session of said court, held at court-room No. 5, in the city of Detroit, in said county, on the 2nd day of March, A. D. 1900.

Present: Hon. Morse Rohnert, circuit judge.

This cause having come on to be heard, upon the bill of complaint, and proofs taken in open court, and having been argued by counsel for respective parties, and the court having duly considered the same, it is ordered, adjudged and decreed:

First. That the contract described in said bill of complaint, made between the City of Detroit and the Board of Public Works, on the one part, and the Alcatraz Asphalt Paving Company, on the other, is null and void, and it is hereby set aside and cancelled, and that all proceedings had thereunder are of no effect, and that the defendants The City of Detroit and The Board of Public Works be, and are hereby perpetually enjoined from acting under or enforcing the same.

Second. That the assessment set forth in said supplemental bill of complaint levied against the complainants is hereby declared null and void, and that the defendant The City of Detroit be perpetually enjoined from attempting to collect the same.

Third. That the defendants pay to the complainants their costs to be taxed, and that an execution be issued therefor.

MORSE ROHNERT,
Circuit Judge.

34 EXHIBIT "B."

United States Weather Bureau—Record of Maximum and Minimum Temperature at Detroit, Mich., from—

Date.	November, 1898.		December, 1898.		January, 1899.	
	Max.	Min.	Max.	Min.	Max.	Min.
1	52	38	33	25	17	9
2	53	42	36	32	30	14
3	55	38	42	31	41	24
4	64	46	36	30	50	33
5	60	42	34	26	33	18
6	42	34	30	22		
7	48	32	25	16		
8	52	43	22	10		
9	43	33	26	16		
10	38	32	21	14		
11	35	27	30	18		
12	40	27	30	19		
13	40	34	20	10		
14	40	33	16	4		
15	40	33	24	11		
16	41	30	36	20		
17	49	35	35	29		
18	54	43	38	25		
19	49	39	37	21		
20	45	36	40	34		
21	63	41	36	34		
22	59	18	43	34		
23	23	14	36	31		

Date.	November, 1898. Max.	Min.	December, 1898. Max.	Min.	January, 1899. Max.	Min.
24	25	18	31	25		
25	29	17	29	24		
26	33	26	31	24		
27	33	21	33	14		
28	33	16	28	12		
29	34	29	49	28		
30	33	25	47	20		
31	...	...	20	14		

Certified copy.

NORMAN B. CONGER,
Inspector Weather Bureau.

35 EXHIBIT "C."

Cass Farm Co., Limited, 604 Union Trust building.

DETROIT, MICH., *Dec.* 29, 1898.

To the Board of Public Works, Detroit, Michigan.

GENTLEMEN: We desire to call your attention to the character of the asphalt paving which is being put down upon Second avenue between Colburn place and the railroad crossing. The concrete in many places has been put down in cold weather, has frozen and disintegrated, and the asphalt has been put down under similar circumstances. In many instances the asphalt has been put down when the concrete was not set, and frequently the wagons hauling the asphalt would sink into the concrete when they were passing over it.

As substantially all of this work has been done after the time limited in the charter for doing paving, it seems to us that the consequence of such poor work should not fall upon the property-owners.

You are probably aware that we have already filed a bill against the city to enjoin this paving job, and one of the points made in that bill was that it was impossible to complete the work within the time prescribed by the charter. We now call your attention to the matter again, and wish to record our protest, not only against the work, but against the character of the work which is being done.

Yours truly,
(H. M. C.)

CASS FARM CO., LTD.
H. M. CAMPBELL, *Treas.*

36 EXHIBIT "D."

City engineer's office.

Asphalt on concrete; two roadways, each 30 feet wide.

DETROIT, *August* 31*st*, 1898.

Quantities for grading, paving, etc., Second avenue from the south curb line of Colburn place to the south line of the railroad, exclusive of the quantities within the lines of the cross-streets and alleys.

Quantities.	Description of work.	Dolls.	Cts.
4,669	Cubic yards of excavation.....		
6,046.25	Lineal feet of circular curbstone (new), straight..		
471.20	Lineal feet of curbstone in 10.15 R. Medina, furnished by contractor.....		
75	Lineal feet of retaining stone (old Medina curb may be used), set in concrete 6 inches deep, 8 inches wide.....		
10,728.12	Square yards asphalt on concrete.....		
	Square yards of concrete.....		
	Cubic yards of concrete under and behind curb.		
	At the junction of pavement with car track the contractor will fill void under rail heads with cement mortar without extra charge.		
	Proportion of cost of advertising and blanks to be paid by tax.....	$29	00
	Proportion of inspector's compensation to be paid by tax	429	00

For the city.

The quantities within the lines of intersections of the cross-streets and alleys and the cross-walks within such intersections.

Quantities.	Description.	Dolls.	Cts.
1,477	Cubic yards of excavation.....		
	Cubic yards of excavation, including old paving material		
	Lineal feet of new curbstone (straight).....		
326.56	Lineal feet of new curbstone in 20.10, 2.4 R. Medina circles, furnished by contractor.....		
	Lineal feet of curbstone in (—) circles, furnished by city, set by contractor.....		
	Lineal feet of curbstone reset.....		
3,729.60	Square yards of asphalt on concrete paving.....		
	Square yards of — paving.....		
	Square yards of concrete under paving.....		
	Cubic yards of concrete under and behind curb.		

37

450.50 Lineal feet of retaining stone, old Medina curb may be used, set in concrete 6 inches deep and 8 inches wide.....
Lineal feet of retaining plank .....

At the junction of pavement with car-track the contractor will fill void under rail heads with cement mortar without extra charge.

City's proportion of cost of advertising and blanks..... $11 00
City's proportion of inspector's compensation... 149 00

I certify that the above quantities and estimates are correct.

H. D. LUDDEN,
City Engineer.

Know all men by these presents that we, The Alcatraz Construction Co., of New York City, and The American Bonding & Trust Co., of Baltimore City, are held and firmly bound unto the City of Detroit in the sum of nine thousand three hundred and twenty-seven dollars and seventy-four cents ($9,327.74), lawful money of the United States of America, to be paid to the City of Detroit, or their attorneys, successors or assigns, for which payment, well and truly made, we and each of us do jointly and severally bind ourselves and each of our heirs, executors and administrators, firmly by these presents.

Whereas, the above-bounden Alcatraz Construction Co., in an instrument in writing under their hand and seal, dated this ninth day of September, 1898, contract with the City of Detroit to furnish all material and labor, excavate for, build, construct, and in all respects complete, according to specifications thereto annexed in paving with asphalt Second avenue, first section, Detroit, Michigan.

Whereas, in the specifications forming a part of this contract it was agreed by the said Alcatraz Construction Co. that it should give to the City of Detroit a written warrantee and guarantee for the durability of the work and pavement for ten years from the completion of the same. Covenanting and agreeing therein to make and keep the pavement, its entire width and length, in good order and repair during said ten years without any expense to the City of Detroit or taxpayers of the street for the same; and as a security for the faith-

38 ful performance of and fulfilling these specifications and contract, and the carrying out of the spirit and letter of said warrantee, the contractor shall give to the City of Detroit a good and approved bond for a sum not less than nine thousand three hundred and twenty-seven dollars and seventy-four cents ($9,327.74), binding themselves, their heirs, executors and administrators, faithfully to the performance and completion of the same.

Now, therefore, in consideration of these presents, the said bounden Alcatraz Construction Co. does hereby covenant and agree to and with the said City of Detroit that the said pavement shall be durable for the period of ten years from the date hereof, and that it will

keep the same, its entire length and width, in good order and repair during the said ten years without any expense to the City of Detroit or tax-payers of said streets, and the condition of this obligation is such that if the said Alcatraz Construction Co., or its executors, or administrators, shall well and truly keep the said pavement, its entire length and width, in good order and repair during the said ten years next ensuing without expense to the City of Detroit or tax-payers of the street for the same, otherwise to remain in full force and virtue.

(Signed) ALCATRAZ CONSTRUCTION CO.,
By OTTO E. C. GUELICH, *Attorney-in-fact.*
AMERICAN BONDING & TRUST CO.,
[SEAL.] By JOHN E. ROBIE, *Vice-Pres't.*

Attest: AUSTIN H. HART,
Ass't Secretary.

[Revenue stamps, fifty cents.]

STATE OF NEW YORK,)
County of Erie, City of Buffalo,) *ss:*

ON this ninth day of September, 1898, before me personally appeared Austin H. Hart, to me known, who, by me being duly sworn, deposes and says that he resides in the city of Buffalo, N. Y.; that he is the assistant secretary of the American Bonding & Trust Company; that he knows the corporate seal of the company; that the seal affixed to this instrument is such corporate seal; that it was affixed by order of the board of trustees of such company, and that he signed the same by like order as assistant secretary of said company; and he further says that he also knows John E. Robie, the vice-president of the company, and that the signature of the said John E. Robie is in the handwriting of the said vice-president, and was thereto subscribed in the presence of the said assistant secretary by like order of the board of trustees.

(Signed) MAX G. COHEN,
[SEAL.] *Notary Public, Erie Co., N. Y.*

39 Know all men by these presents that we, The Alcatraz Construction Company, of New York City, as principal, and The American Bonding & Trust Company, of Baltimore City, as sureties, are held and firmly bound unto the City of Detroit in the sum of nine thousand three hundred and twenty-seven dollars and seventy-four cents ($9,327.74), lawful money of the United States of America, to be paid to the said City of Detroit, its successors or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the ninth day of September, one thousand eight hundred and ninety-eight.

Whereas, the above-bounden Alcatraz Construction Company, by an instrument in writing under its hand and seal, bearing even

date with these presents, contracts with the City of Detroit to furnish all material and labor, excavate for, build, construct and in all respects complete, on or before the thirty-first day of October, 1898, in the manner, on the conditions and for the consideration in the annexed and preceding contracts mentioned and contained for the paving with asphalt Second avenue, 1st section, Detroit, Michigan.

Now, therefore, the conditions of the above obligations are such that if the above-bounden Alcatraz Construction Co. shall well and truly and in good and sufficient workmanlike manner perform the work mentioned in the aforesaid agreement in accordance with the terms and conditions therein stipulated, and in each and every respect comply with the conditions therein contained, and shall well and truly pay, or cause to be paid, in full, the wages stipulated and agreed to be paid to each and every person employed by it to perform any labor services by the said Alcatraz Construction Co. above named, or its agent or agents, in the doing of the work above mentioned as specified in the agreement or contract between the Alcatraz Construction Company and the City of Detroit, hereunto annexed, during the process of said work, and shall pay when the same shall become due, the price of all material provided or used in the performance of said work, and shall in all things faithfully perform on its part the terms and conditions of said contract or agreement, then this obligation shall cease, otherwise to be and remain in full force and virtue. And in case the above-bounden Alcatraz Construction Company shall fail to fully complete the said work on or before the 31st day of October, 1898, then and
40 in that case we do further undertake and become bounded to pay to the City of Detroit the sum of nine thousand, three hundred and twenty-seven dollars and seventy-four cents ($9,327.74) as stipulated damages, and not as a penalty. And in case the said Alcatraz Construction Company shall fail to pay to each and every of the persons employed to perform labor or services aforesaid, or to whom anything shall be due for material provided or used in the performance of said work, as hereinabove provided, then each and every of said persons to whom the aforesaid Alcatraz Construction Company shall be then indebted may bring an action on this instrument in his or her name for the recovery of the amount of such indebtedness in the same manner as if such person was a party named in this instrument.

(Signed) ALCATRAZ CONSTRUCTION CO.,
[SEAL.] By OTTO E. C. GUELICH, *Attorney-in-fact.*
THE AMERICAN BONDING & TRUST CO. OF BALTIMORE CITY,
By JOHN E. ROBIE, *Vice-Pres't.*

Attest: AUSTIN H. HART,
Assistant Secretary.

STATE OF NEW YORK, } ss:
County of Erie, City of Buffalo, }

On this ninth day of September, 1898, before me personally appeared Austin H. Hart, to me known, who, by me being duly sworn, deposes and says that he resides in the city of Buffalo, N. Y.; that he is the assistant secretary of the American Bonding & Trust Co.; that he knows the corporate seal of the company; that the seal affixed to this instrument is such corporate seal; that it was affixed by order of the board of trustees of such company, and that he signed the same by like order as assistant secretary of said company. And he further says that he also knows John E. Robie, the vice-president of the company, and that the signature of the said John E. Robie is in the genuine handwriting of the said vice-president, and was thereto subscribed in the presence of the said assistant secretary by like order of the board of trustees.

(Signed) MAX G. COHEN,
[SEAL.] *Notary Public.*

41 To the Board of Public Works:

We, the undersigned, offer to execute and perform the work specified in the advertisement hereunto attached according to the specifications adopted by the common council, at the following prices, to wit:

	Quantities.	Rate.	Total cost—curb.	Total cost—curb.
Excavating and removing earth or other material, per cubic yard	4,669	.10	$466.90	
Medina curbstone, per lineal foot	6,046.25	.45	2,720.81	
Curbstone, per lineal foot, circles	471.20	.81	376.96	
North River blue, per lineal foot				
Retaining stone	75	.10	7.50	
Granite, per lineal foot				
Paving, cedar blocks on concrete, per square yard				
" brick on concrete, per square yard				
" asphalt on concrete, per square yard	10,728.12	1.55	16,628.59	
" Thousand Islands granite block, per square yard				
" Medina stone on concrete, per square yard				
" cobblestone, per square yard				
Concreting under and behind curb, per cubic yard				
Assessment total			$20,200.76	

Paving, etc., City of Detroit.

Excavating and removing earth or other material, per cubic yard				
Medina curbstone, per lineal foot				
Elyria curbstone, per lineal foot				
North River blue, per lineal foot				
Woolmith, per lineal foot				
Granite, per lineal foot				
Curbstone, circular, per lineal foot				
Curbstone, reset, per lineal foot				
Paving, cedar blocks on concrete, per square yard				
" brick on concrete, per square yard				
" asphalt on concrete per square yard	3,729.60	1.55	5,780.88	
" Thousand Islands granite block, per square yard				
" Medina stone on concrete, per square yard				
" cobblestone, per square yard				
Concrete under paving, per square yard				

The above proposals include ballast, gravel, top dressing and laying and finishing complete the pavement, curbstone and crosswalks, as required by the specifications adopted by the common council, the estimates of the city engineer on file in the board of public works office, and the advertisement hereunto attached.

ALCATRAZ CONSTRUCTION CO.,
By OTTO E. C. GUELICH,
Attorney-in-fact. } *Bidders.*

Instructions to Bidders for Paving Streets.

All parties desiring to submit proposals for paving streets with any patent pavement shall, before such proposals are opened, file with the board of public works a certified copy of the letters patent under which their proposals are made, and the authority under which they propose to use such patent pavement on the streets of the city, or file a bond to indemnify the city against all claims of royalty.

(See council proceedings, May 17, 1892.)

Bidders will be required to file a certified — with the board of public works, before the proposals are opened, conditioned that, should they be found to be the lowest bidders and the common council accept their bid, they will enter into a contract within ten days, with good and sufficient sureties to perform the work.

Bids must be endorsed with the names of the parties bidding, the name of the street and the kind of pavement.

In no case will proposals be considered, unless the above requirements are fully complied with.

Blanks and all necessary information will be furnished by the board of public works.

42 *Specifications for Asphalt Sheet Pavement in the City of Detroit, Mich., under the Board of Public Works. Adopted February 24, 1892.*

The old —— pavement to be taken up, and all material and rubbish, including whatever surface dirt may be on the street at the time, shall be removed from the street and disposed of by the contractor, except that the city will reserve such of the best of the material as the board of public works may select and remove from the street after having been taken up by the contractor.

The street to be graded to its established grade, under the direction of the board of public works, and to be excavated to such a depth below the true grade as the board may deem necessary for the purpose of receiving ballast for the roadway. The bottom of excavation when completed shall conform to the section or crown of the street as furnished by the city engineer. If there are places in the street which are not firm or properly settled, caused by trenching or connection of sewers, gas or water pipes, the earth must be taken out and the space refilled with broken stone or coarse gravel, and pounded to make it solid. In all cases where any filling may

be necessary to bring the bed to the required height, it shall be done in layers not to exceed six (6) inches in depth, and be thoroughly tamped or rolled to insure a solid bed. None of the earth excavated shall be piled upon the sides of the street, unless required for filling a low spot at the point where left.

If the contractor shall excavate deeper than the depths shown on the diagram, the depressions shall be filled with broken stone or gravel.

Before placing the ballast or concrete thereon, the subgrade in each block shall be well rolled with a steam roller weighing not less than seven (7) tons; if the contractor does not himself own such a roller, the same to be furnished and operated by the city of Detroit at a cost to the contractor of one cent per square yard. The surplus earth, if any, must be disposed of by the contractor, the said board reserving the right to direct the contractor to remove any earth it may require for the purpose of filling up any low lots, alleys, and sidewalks to the proper grade within the assessment district, or for six hundred (600) feet outside thereof.

43 The contractor will excavate a trench twelve (12) inches wide on each side of and beyond the line of the roadway to the depth of twenty-four (24) inches below the established grade.

The bottom of the trench to be smoothly trimmed parallel to the curb grade, and have laid therein a continuous line of well-burned four (4) inch tile, to be well connected, to the receiving basins. Joints are to be well covered with tar paper and the tile covered with broken stone or gravel.

When the road-bed has been prepared as specified above, it will be covered by a layer of concrete six (6) inches in thickness and prepared in the following manner: The component parts of the concrete will be: One (1) part of freshly burned and finely ground American cement standing the following tests made by the city engineer: No more than ten (10) per cent. will fail to pass through a sieve of twenty-five hundred meshes to the square inch; when mixed neat with the least amount of water necessary to make a good mortar, it will sustain a tensile strain of not less than sixty (60) pounds per square inch, after being allowed to set in air for one (1) hour, and followed by an immersion in water for twenty-four (24) hours; two (2) parts of clean, sharp lake or river sand, free from clay, loam or vegetable matter; five (5) parts of crushed or broken boulders, granite, syenite, paving brick or hard limestone, or clean screened bank gravel, the piece not to be larger than two (2) inches or smaller than one-half ($\frac{1}{2}$) inch in any dimension. The sand and cement will be thoroughly mixed while dry, and then just enough water will be added during the mixing process to make a good mortar. The crushed or broken stone must be screened if necessary to free it from dust, dirt or stone refuse. After being wet with clean water, the crushed or broken stone shall be thoroughly mixed on boards with the cement mortar until every piece of stone is completely enveloped by mortar. The proportions will be fixed by actual measurement. This concrete will be immediately applied to the road-bed, and rammed until the surplus cement mortar appears

upon the surface, which latter will be made parallel to the road-bed and in exact accordance with the diagram. No walking or driving will be allowed on the concrete until it is thoroughly set. All defects in this foundation, no matter from what cause, must be repaired or corrected before the work will be allowed to progress.

44 Curbing now set upon the streets to be taken up, rejointed and reset to the proper line and grade wherever directed. New curbing to be set wherever ordered, and must be of the best quality of Medina, Hammond, Berlin Heights or Berea stone, and to be of the following dimensions: Medina, four (4) inches thick and not less than four (4) feet long; Hammond, four (4) inches thick and not less than four (4) feet long; Berlin Heights, four (4) inches thick and not less than four (4) feet long; Berea, four (4) inches thick and not less than four (4) feet long; all to be eighteen (18) inches deep; stones to be flat-tool or crandle dressed, true and smooth, with close joints at the ends at least fifteen (15) inches below the top of the curb and shall have a straight and even face on the side toward the gutter to the same depth as end joints; top to be dressed to a straight line, and to a ¼-inch bevel in five (5) inches, and to a uniform thickness of four inches, and brought to a straight line on top and face by the use of a straight-edge. Stones to be taken out of wind, and to be cut with a ¾-inch flat tool-draught on upper edge of face, stones to be set with close joints to the true line and grade of the street, and settled into place with a paver's rammer, and the sand, in front and rear, tamped with a heavy hand-tamper to the full depth of the stones. Curbing to be jointed and set as directed around curves and corners at same price as for straight work. All junctions at street corners will be set as a true segment of a circle of four (4) feet radius, in one piece, except Medina stone, which may be set in two (2) equal segments. The curb to be set in a bed of properly compacted, sharp, clean, river, or bank sand, and backed up with the same material to the full depth which may be in two (2) equal segments. The curb to be set in a bed of properly *contractor* — a distance of three (3) feet from the curb, where the top of the same is above the natural surface, and all to be left in a neat and sightly condition.

Upon this base will be laid the wearing surface or pavement proper, the binding material of which is a cement, prepared with any asphaltum; which must not be inferior in quality to that made

45 by refining the best quality of crude asphaltum obtained from the pitch lake of the island of Trinidad, and must be refined, and as far as possible freed from foreign organic and animal matter and volatile oil, and should contain at least sixty (60) per cent. of bituminous matter soluble in bisulphide of carbon. The wearing surface will be composed of:

Asphaltic cement	from 12 to 16	per cent.
Sand	from 73 to 67	per cent.
Pulverized carbonate of lime	from 15 to 17	per cent.
	100	100

These proportions will be varied according to circumstances, as may be necessary to secure the best practical result.

The carbonate of lime may be reduced or omitted entirely when suitable sand can be obtained.

In order to make the pavement uniform the proportion of asphaltic cement must be varied according to the quality and character of the sand.

The sand and asphaltic cement are to be heated separately to about 300 degrees Fah. The pulverized carbonate of lime, while cold, is to be mixed with hot sand in the required proportions, and then mixed with the asphaltic cement at the required temperature and in the proper proportion, in an apparatus suited to effect a perfect mixture.

The pavement mixture thus prepared will be laid on the concrete base in two coats. The first, called the cushion coat, will contain from two to four per centum more asphaltic cement than is given above; it will be laid to such a depth as will give a thickness of half an inch after being consolidated by a roller. The second, called the surface coat, prepared as above specified, will be laid on the cushion coat; it will be brought to the ground in carts, at a temperature of about 250 degrees Fah.; it will be carefully spread by means of iron rakes, in such a manner as to give a uniform and regular grade, and to such a depth that, after having received its ultimate compression, it will have a thickness of two inches. The surface will then be compressed by a hand roller; after which a small amount of hydraulic cement will be swept over it, and will be thoroughly compressed by a steam roller; the rolling being continued as long as it makes an impression on the surface. No teaming shall be permitted over the pavement until the street is opened for travel by the contractor or board of public works.

46 A sample of the asphalt paving cement, one pound in weight, proposed to be used on the paving, shall be furnished. The sample to be labeled with the bidder's name and address, and deposited in the office of the board of public works on or before the first day of May in each year.

There shall be set at the edge of the asphalt pavement where it crosses any intersecting street or alley a line of retaining stone of the same quality as the curbstone. The stones shall be four (4) inches thick, not less than eighteen (18) inches deep, and not less than three (3) feet long, and conform to the surface of the pavement with their exposed edge.

When street or other railroad tracks run through or across streets to be paved with asphalt, a marginal line of Medina or Hammond stone-paving blocks, placed as alternate headers and stretchers, shall be set, before the asphalt is laid, against the line of rails wherever the asphalt would otherwise be in contact with them.

Whenever the contractor is not present on the work, orders will be given to the superintendents or overseers who may have immediate charge thereof, and shall by them be received and strictly obeyed. And if any person employed on the work shall refuse or neglect to obey the directions of the board of public works, or its

duly authorized agents, in anything relating to the work, or as shall appear to the said board to be incompetent, disorderly or unfaithful, he shall, upon the order of the board of public works, be at once discharged and not again employed on any part of the work.

All settlement, defects or damages, in any portion of the pavement, by public travel, rain, snow, ice, frost or other causes, before the final acceptance of the work by the city, shall be repaired and made good at the contractor's expense. All rubbish which may accumulate during and by reason of the work herein provided for shall be removed by the contractor as fast as the pavement is laid, and the street left clean and in good condition.

47 Material delivered on the street, either before or after dressing, to be neatly and compactly corded up along the sides of roadway, in such a manner as to cause the least inconvenience to property-owners and to the general public. Private drives and street crossings to be kept open. Shade trees, and other improvements shall be protected by the contractor from all damage by stone or otherwise.

Travel upon the street, or upon any intersecting street or alley, shall not be hindered or inconvenienced needlessly, nor shall any portion of the roadway or street be opened up, nor shall the same be wholly obstructed without the direction of the board of public works, in which latter case the contractor shall cause plain and properly worded signs, "Street closed," announcing such fact, to be placed with proper barricades, at the nearest cross-street, upon each side of such obstructed portion, and upon intersecting streets, where travel can pass around the same in the shortest and easiest way.

Colored lights, and, if required, night watchmen are to be maintained, at the expense of the contractor, when necessary, to prevent accident.

The city reserves the right to lay or relay any and all necessary gas, water or sewer pipes during the progress of the work, or to build or rebuild any catch-basins, sewers, cisterns, or street railroad tracks.

The contractor will furnish a ten-year guarantee for his work, without extra charge. The guarantee to be of such form and nature as the board of public works may direct.

If at any time during the continuance of said guarantee the pavement should be open for the purpose of putting in the street sewers, gas pipe or water mains, or repairing the same, or for any other purpose, the contractor shall relay said pavement at a cost of ten (10) per centum above the original price, and when said pavement is relaid and restored, said guarantee shall extend to the pavement so relaid and restored for the balance of the time for which said guarantee is to continue, and in no case where it shall become necessary to disturb said pavement for any of the purposes above mentioned shall it be deemed as releasing said contractor from said guarantee.

48 The work shall at all times be subject to inspection by the city, as the work progresses, but such inspection shall not re-

lieve the contractor from any obligation to perform said work strictly in accordance with these specifications, and the work not so constructed shall be removed and made good by the contractor, whenever so ordered, without reference to any previous oversight in inspection.

The first party shall not assign or transfer this contract or sublet any of the work embraced in it, without the consent in writing of the board of public works being first obtained.

The work embraced in this contract shall be begun within one week after written notice so to do shall have been given to the contractor by the board of public works, and carried on regularly and uninterruptedly thereafter (unless the said board shall otherwise, in writing specially direct), with such a force as to insure its full completion within the time specified in the contract; the time of beginning, rate of progress, and time of completion being essential conditions of this contract. And if the contractor shall fail to complete the work by the time specified in the contract, the sum of twenty-five dollars per day for each and every day thereafter, until such completion, shall be paid to the city of Detroit through the board of public works before acceptance of the work.

The contractor, for himself or for any subcontractor under him, shall well and truly pay, as the same may become due and payable, all indebtedness which may become due to any person, firm or corporation on account of any labor or material furnished in connection with the contract of which these specifications form a part; and in case of his failure so to do, and on written notice of any unpaid claim for labor or material as above being filed with the board of public works, a sum of money sufficient to cover such a claim or claims shall be retained from any moneys due or to become due said contractor on his contract, and if such claim or claims be fully substantiated to the satisfaction of the board of public works, said board shall pay such claim or claims from the moneys so retained, any residue to be paid to such contractor on the completion of the work.

The city reserves the right to accept or reject any or all proposals made under these specifications at any time within thirty (30) days after the same are received.

Detroit, Sept. 9th, 1898.

49 Board of Public Works, City of Detroit.

Paving Contract.

This agreement, made and concluded this ninth day of Sept., one thousand eight hundred and ninety-eight, by and between the City of Detroit, by the Board of Public Works in that behalf, duly authorized by the common council of said city, party of the first part, and Alcatraz Construction Co., of the City of Detroit, contractor, party of second part.

Witnesseth, that the said party of the second part has agreed, and by these presents does agree with the said party of the first part, for

the consideration hereinafter mentioned and contained, and under the penalty of a bond bearing even date with these presents, and hereunto annexed, to furnish at its own proper cost and expense, all the labor and materials, and grade, pave, etc., etc., Second avenue from the south curb line of Colburn place to the south line of the railroads, with Alcatraz sheet asphalt on concrete foundation, two roadways, each 30 feet wide, with Medina curb, said curb to be cut in Detroit, Mich. Pavement in conformity with the specifications and estimates hereto attached and made part of this contract, and the grades and cross-sections of said work, now on file in the Board of Public Works office, according to all the conditions herein named, and to the acceptance of the said party of the first part.

And the said party of the second part further agrees to keep and maintain the said pavement in good condition and repair for ten (10) years from and after the date of the acceptance of said pavement by the Board of Public Works, so that neither the city nor the property-owners on said avenue shall be at any expense, whatever, for repairs upon said avenue, and that said pavement shall at the expiration of said ten (10) years be in good condition and repair; and that all repairs necessary shall be made within a reasonable time after notice from the Board of Public Works to make the same, and shall be thoroughly made to the satisfaction of said board at any time during the continuance of this guarantee period, up to and including the last day thereof; and should the contractor fail to make necessary repairs during the guaranteed period within 10 days after notice being given him by the Board of Public Works, the city (through said board) is hereby authorized to make the same, or cause the same to be made, and the contractor and his bondsmen shall be severally and jointly liable for the cost of the same, including supervision and all other expenses in connection; and neither the acceptance of said pavement, nor the payment thereof shall be deemed a waiver of the terms and conditions of this provision, nor a release from the obligations hereby entered into.

50 Provided, however, that if at any time during the said period of ten (10) years the pavement shall be opened for the purpose of putting in the street sewers, gas pipe or water mains, or repairing the same, or for any other purpose, the said party of the second part shall relay said pavement at a cost of ten (10) per centum above the original price, and when said pavement is relaid and restored, the terms and conditions hereof shall extend to the pavement so relaid and restored for the balance of the said period of ten (10) years then remaining, and in no case where it shall become necessary to disturb said pavement for any of the purposes above mentioned, shall it be deemed as releasing the said party of the second part from any of the terms and considerations hereof.

This contract is subject to confirmation by the common council.

The party of the second part hereby agrees and assents to the provisions and requirements of "an ordinance to prescribe the number of hours which shall constitute a day's work, etc.," passed by the common council of the city of Detroit, April 7th, 1891, as follows:

SECTION 1. That hereafter eight hours shall constitute a day's work for all laborers, workmen and mechanics who may be employed by, or in behalf of the City of Detroit, or any of its authorized boards or officers, or who may be employed by contractors and subcontractors in work done or executed under contracts with the said City of Detroit or its various authorized boards or officers.

SEC. 2. All contractors and subcontractors for work in behalf of the City of Detroit, under contracts with the City of Detroit, or its authorized boards or officers, shall be required to insert in their contracts or agreements with said city, or said boards or officers, a clause assenting to the provisions and requirements of this ordinance, and on the failure or neglect of said contractor or subcontractor to observe and respect the provisions herein contained, the contract or agreement entered into by said contractor or subcontractor, shall be forfeited and so declared by the common council. Provided, however, that in the case of unfor-seen accident or calamity, the common council may declare that the contract shall not be forfeited.

And the party of the second part hereby agrees and asserts that in the fulfillment of their contract and in the performance of any and all work hereunder no non-resident alien shall be employed by said second party or by any agent, subcontractor or employé of said second party.

51 And the party of the second part hereby agrees as follows:

1st. To clean up and carry off from said street all the stone, earth or other rubbish, or material which may have accumulated during the construction of said work.

2d. To put and leave all side and cross walks in as good condition as at the commencement of the work, and at the intersection and crossing of streets where the same join said pavement, to leave the roadway in good condition for public use.

3d. To erect and maintain a good and sufficient fence, railing or barrier around any and all excavations necessary for said work, in such a manner as to prevent accidents; to place upon such railing, fence or barrier, at twilight on each day, suitable and sufficient colored lights, and keep them burning during the night; and further, to pay to, indemnify, and save the city harmless against all loss and damage which may be occasioned or arise by reason of any negligence or carelessness on its part in doing such work.

4th. To do all work in a thorough and workmanlike manner, and conform in every particular to the plans, specifications and directions of the Board of Public Works, and in a manner to interrupt as little as practicable the free use of the street by the public.

5th. To claim no extra allowance for any contingencies in doing the foregoing work in a good and workmanlike manner, whether specially set forth herein or not; and to claim no pay for materials, work or labor not completed and fully accepted as completed.

6th. Said work to be completed on or before October thirty-first (31st), 1898.

7th. To carry on the work under the supervision and direction of the Board of Public Works and its duly authorized superintend-

ents and inspectors, and at such points or places as the said board shall from time to time direct; and no part of the way to be paved shall be torn up or excavation made until the board shall direct, and then only shall the work be commenced and continued at such places as the board shall designate. And it is understood that such designation will not be made until the contractor is apparently ready to proceed with the work and complete the same.

8th. To notify, when it becomes necessary to disturb the gas pipes, lamp posts, service pipes, or other gas pipes or fixtures, or the water pipes or fixtures, or street railroad track, the gas company or superintendents of the water works or street railroads respectively, of said necessity, and that it will not cause, permit or suffer any hindrance or interference with the agents of said companies or superintendents in the protection or relaying of said pipes or fixtures or street railroad tracks.

52 9th. That it will not employ unfaithful or incompetent workmen or overseers, or disorderly persons; and that it will immediately discharge any person in its employ who is declared to be so, and whenever directed by said board.

10th. And further, that it will personally perform the several stipulations of this contract, or by workmen under its immediate superintendence, and not by a subcontractor. And also that it will give its own undivided attention to the work, and will not assign or transfer its interest, or any part thereof in this contract, to any person or persons without the concurrence of said board in writing.

11th. That it will give the Board of Public Works forty-eight (48) hours' notice before commencing the work.

12th. That the contractor will erect barriers, preventing travel upon or across the avenue, at such places as the Board of Public Works, its inspectors or superintendents shall direct, with signs announcing that the street is closed, and will maintain the same until their removal is ordered by the board.

13th. That the contractor will pay, indemnify and hold the City of Detroit harmless for and against all damages costs and expenses which the city may suffer or may come to it or arise from any act done or suffered by the said contractor or of any of his agents, subcontractors or employees, or of any neglect, default or omission by such contractor, his agents, subcontractors or employees to do or perform any act or duty imposed upon such contractor by the contract or by law.

It is mutually agreed by and between the parties hereto, as follows:

A. The said Board of Public Works shall have the power to diminish the quantity of the work during its progress, at a street crossing, without vitiating this contract, but no part of the work shall be altered by the contractor from that prescribed in the specifications, without the express sanction of the Board of Public Works, in writing.

B. The party of the second part, being notified by the Board of Public Works, in writing, that the work herein provided for is in their opinion, unnecessarily delayed, and will not be finished in the

prescribed time, the said board by and with the consent of the common council, may declare this contract forfeited on the part of the party of the second part, and the party of the first part shall not be liable for any unfinished work or material furnished therefor.

C. The contractor, its foreman or clerk, shall, upon or within six hours after receiving written notice from the Board of Public Works, at any time, and at all times, remove from the ground or works, whether worked or otherwise, all materials which may be unsound, improper and not corresponding with the specifications or drawings; and not approved by them and substitute and bring back good and proper materials in lieu thereof, and in case of default therein, the Board of Public Works shall be at liberty so to do at the cost and charge of the contractor.

53

And the said party of the first part, in consideration of the faithful and entire performance by said second party of the foregoing and following conditions and stipulations, and specifications and estimates hereto attached, hereby agrees to pay to the said party of the second part, as hereinafter provided and conditioned, the sum of one dollar and eighty-four ($1.84) $\frac{336}{1000}$ cents, in the manner hereinafter provided, for each and every square yard contained in the above work for the entire — thereof, and all work and materials necessary to complete the same: Provided, the whole shall be completed and accepted as such by the common council, on or before the date aforementioned for completing the same.

D. It is further mutually agreed, that the payments due said second party under this contract as above mentioned, shall be made in the following manner, to wit: The party of the first part shall, by warrants drawn on the city treasurer by the controller, upon estimates furnished from time to time by the Board of Public Works, pay the said contract price for grading and paving the interior spaces and intersections of cross-streets and alleys, and for cross-walks within the limits of the contemplated improvements and in front of other public property, for and in full of all work fully performed, and all materials furnished therefor by said party of the second part when the same shall be completed according to contract.

E. The party of the first part shall pay the party of the second part for the remainder of the contract price as above specified, bonds to be issued upon the faith and credit of the city or the proceeds of such bonds in case they should be purchased by the sinking-fund commissioners, in accordance with the provisions of sections 42 and 43 of chapter XI, of the charter of the City of Detroit, as amended May 4th, 1893, and agrees that said bonds shall be delivered to said second party within thirty days from the time of the completion and acceptance of the work contracted to be performed herein by said second party, said bonds to be accepted by said second party in full payment of all obligations of said first party for the portion of the work specified.

54

F. That all measurement and determination of quantities shall be made by the city engineer, and that his measurement shall be final and conclusive between the parties, and that nothing in this agreement contained shall be so construed as to deprive the

said city of any remedy or defense it may have under the same for any violation of any of the terms or conditions of this agreement; and the Board of Public Works shall have the right to require the party of the second part to suspend or discontinue the work, or any part thereof, when, in the opinion of said common council, or the said board, the party of the second part is not doing the work in accordance with the stipulations of this contract; and for such work and materials as shall not comply with the specifications the party of the second part shall forfeit and have no claim whatever therefor.

G. That in case the laying of said pavement, or any of the work shall be enjoined or delayed by reason or claim that the same is in violation of, or an infringement of any patent, the same shall not operate to or have the effect to constitute a breach of this contract or claim for damages by either party, and such work may be completed after such injunction or cause of delay shall be removed. The party of the first part shall defend any and all suits brought to restrain or enjoin such work and bring such suit to a final determination without unnecessary delay, and save the party of the second part harmless from damages and costs.

In witness whereof, the party of the first part has caused its seal to be affixed hereto, and the signatures of the members of the Board of Public Works, in its behalf, to be hereunto subscribed, and the party of the second part has hereunto set their hand and seal the day and year first above written.

ALCATRAZ CONSTRUCTION CO., [L. S.]
By OTTO E. C. GUELICH, *Attorney-in-fact.*
THE CITY OF DETROIT,
By D. W. H. MORELAND,
[SEAL.] JAMES W. MILLEN,
Board of Public Works.

Witness:
J. C. OLDFIELD.

Attest: CHAS. R. FORSTER,
Deputy City Clerk.

55 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

THE CASS FARM IMPROVEMENT COMPANY, LIMITED, ET AL.
vs.
THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS, ET AL.

Russel & Campbell, solicitors for complainants.

GENTLEMEN: You will please take notice that the defendants The City of Detroit and The Board of Public Works claim the benefit of an appeal in the above cause.

Yours, etc.,
CHARLES FLOWERS,
Attorney for said Defendants.

March 3, 1900.

56 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the twelfth day of April, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE CASS FARM IMPROVEMENT COMPANY, LIMITED, and Others, Complainants,
vs.
THE CITY OF DETROIT and Others, Defendants and Appellants.

This cause, coming on to be heard, is argued by Messrs. Russel and Campbell, for complainants, and by Mr. C. D. Joslyn, for defendants, and submitted.

57 *Opinion.*

STATE OF MICHIGAN:

Supreme Court.

THE CASS FARM IMPROVEMENT COMPANY, LIMITED, and Others, Complainants,
vs.
THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS, and Others, Defendants.

This bill was filed to enjoin the City of Detroit from paving a portion of Second avenue, to have the proceedings taken with reference to said paving declared void and the collection of assessments enjoined.

The grounds of relief stated in the bill, in the amended bill and in the supplemental bill are:

1. That the provisions of the charter and of the paving ordinances of the city, in so far as the same provide for an assessment of the cost of paving upon the abutting property in propor-ion to the frontage of such property, were in violation of the Constitution of the United States and the amendments thereof, and therefore null and void;

2. That no detailed estimate of the cost of the proposed improvement had been furnished to the common council by the board of public works, as required by section 12, chapter 15, of the charter of the city;

3. That the advertisements for bids did not specify a time and place when and where the bids were to be opened in the presence of such persons as might choose to attend, as required by chapter 32, section 5, of the Revised Ordinances of the City of Detroit;

4. That the board of public works and the common council failed to comply with the requirements of sections 5, 6 and 7 of chapter 32 of the Revised Ordinances of the city;

5. That the work could not be completed within the time provided

in the contract and required by section 33 of chapter 11 of the charter of the city;

58 6. That substantially all of the work was done after the time named in the contract and after the time limited by the charter of the city of Detroit for doing the work, and that no extension of time had been procured authorizing the continuance of the contract after November 1st.

7. That sections 8 and 9 of chapter 32 of said ordinance, directing the manner in which the assessment-roll should be delivered to the board of assessors, had not been complied with, the assessment-roll not having been delivered to the board of assessors until after the completion of the work under the contract.

8. That the board of public works had accepted the work without deducting the penalty provided by the contract, of $25 per day, for delay, in case of a delay beyond the 1st of November.

It appears that the paving has been fully completed and the work accepted by the city.

1st It is contended that an inflexible rule which requires the assessments in all cases to be according to the frontage area or otherwise, regardless of the circumstances of each particular case, is but an arbitrary exaction, and therefore unconstitutional. It is said that the rule laid down in Norwood *vs.* Baker, 172 U. S., 269, should be followed by this court. That was a street-opening case, and it was held that the law which provided for assessing against the abutting property, in proportion to the frontage, the entire cost of the opening rests upon a basis which excludes any consideration of benefits, and violates the fourteenth amendment of the Constitution of the United States.

That doctrine was laid down by this court in Thomas *vs.* Cain, 35 Mich., 155; but that was a sewer case. In paving cases the rule has been settled in this State by many decisions that it is competent for the legislature to authorize the cost of paving streets to be assessed upon the abutting property according to frontage:

Williams *vs.* Mayor, 2 Mich., 560.
Motz *vs.* Detroit, 18 Mich., 495.
Sheeley *vs.* Detroit, 45 Mich., 431.
Kalamazoo *vs.* Francoise, 115 Mich., 554.

It was said by Mr. Justice Cooley in Sheley *vs.* Detroit, *supra*: "We might fill pages with the names of cases decided in other States which have sustained assessments for improving streets, though the apportionment of the cost was made on the same basis as the one before us. If anything can be regarded as settled in municipal law in this country, the power of the legislature to permit such assessments and to direct an apportionment of the cost by frontage should by this time be considered as no longer open to controversy. Writers on constitutional law, on municipal law and on the law of taxation have collected the cases and have recognized the principal as settled; and if the question were new in this State we might think it important to refer to what they say; but the question is not new. It was settled for us thirty years ago."

59 We should feel inclined to follow the opinion of the Supreme Court of the United States in Norwood *vs.* Baker, *supra*, inasmuch as it was based upon the fourteenth amendment of the Constitution of the United States if that were a paving case; but that was a street-opening case; and until that court shall pass upon the question in the exact form in which it is here presented, we shall feel bound to follow our own decisions.

2d. Section 12 of chapter 15 of the charter provides that when any public improvement is proposed the common council shall refer the matter to the board of public works, who shall proceed to examine the same "and shall as soon as practicable report thereon to the common council, giving detailed estimates of the costs of such work or improvements, if any costs there will be, and will make such recommendation as such board of public works shall deem expedient." It appears that in the present case no resolution was adopted by the common council referring the matter to the board of public works, but that said board assumed the initiative and sent a recommendation to the common council that the street should be paved, furnishing the estimated costs as "Estimated costs, $40,000." It is claimed that this provision of the charter is mandatory and that a failure to comply with its terms rendered any subsequent action void. Counsel cite in support of this:

Butler *vs.* Detroit, 43 Mich., 552.
Mills *vs.* Detroit, 95 Mich., 422.

It is evident that the course taken in the present instance by the board of public works and the common council obviates the difficulties presented in the above cases. The board reported that the cost of such improvement would be $40,000. The city engineer made a detailed estimate of the costs. These matters were laid before the common council before the contract was approved and apparently were duly considered by it.

In Goodwillie *vs.* Detroit, 103 Mich., 286, it was said: "The duty of furnishing the estimate is imposed upon the board of public works. The council called upon the board for such estimates, and an estimate having been furnished and no further particulars having been called for, it must be assumed that the information was sufficiently specific to enable the council to act intelligently."

In Butler *vs.* City of Detroit, *supra*, the board of public works made no report as to the expediency of the proposed improvements, nor did it report any estimate of the costs.

In Mills *vs.* Detroit, *supra*, the board made no report whatever as to costs.

3d. Section 5, chapter 32 of the Revised Ordinances of the city, provides that the "advertisement for bids shall specify a time and place when and where such bids shall be opened by the board of public works in the presence of such persons as shall choose to attend." The advertisement which was actually published reads as follows: "Sealed proposals will be received at the office of the board of public works, Detroit, Michigan, until Tuesday, September

6, 1898, at 10 o'clock a. m., local time, for furnishing all labor,
60 materials," etc. The advertisement contains no statement that the bids will be opened at any time or that an opportunity will be afforded to any person interested to inspect them. It is contended that this requirement of the ordinance is jurisdictional, and that the proceedings based upon the advertisement which was actually published are null and void.

Under the statute creating the board of public works the details relating to the matters of public improvement rest with the board. The advertisement is subject only to the control of the board. The board is required to advertise for proposals and enter into a contract; but the contract does not become valid or binding until approved by the council. The board must determine what the specifications must be. The council can approve or reject them, but has nothing to do with making them. Before a contract can be entered into between the bidder and the board it must be approved by the council. The proofs show that the bids or proposals for this paving were opened in the office of the board of public works at 10 o'clock a. m., local time, on September 6, 1898, in public and in the presence of those who tendered bids, that being the time mentioned as the hour up to which bids would be received. The proofs also show that it had always been the custom of the board to open bids at the hour named. We think from this showing that no one was deprived of any right, and it would be a most technical rule to hold that the whole proceeding must fail and the complainants escape payment for a valuable public improvement by which they are benefited. Whether there was a compliance with the ordinance or not, no one being harmed, the proceedings will not be set aside for that reason.

4th. Among the other specifications attached to the contract is the following: "And if the contractor shall fail to complete the work by the time specified in the contract the sum of $25 per day for each and every day thereafter, until such completion, shall be paid to the city of Detroit through the board of public works before acceptance of the work." It appears that the work under the contract was accepted by the board January 3, 1899, and no deduction was made on account of delay, which it was claimed amounted to over thirty days. It is claimed that under these circumstances the board had no right to accept the work at all, or at least that it had no right to charge against the property-owners the entire cost of the work without making the deduction for the penalty provided in the specifications and that the board had no power to waive the penalty.

We think this claim cannot be sustained. The penalty clause in the contract has no relation whatever to the assessment. It is not provided by law, and it was evidently not intended for the benefit of the abutting property-owners, but for the city at large. The proper authorities have passed upon the question and have accepted the work as satifactory. The acceptance must be held conclusive.

Cooley on Taxation, 2d ed., p. 671.

The other questions raised have no force.

The court below was in error in setting the proceedings aside. That decree must be reversed and a decree entered here dismissing complainants' bill with costs of both courts.

CHAS. D. LONG.
C. B. GRANT.
R. M. MONTGOMERY.
F. A. HOOKER.
J. B. MOORE.

(Endorsed:) Filed June 5, 1900. Chas. C. Hopkins, clerk.

61 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the fifth day of June, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT Walker, Jessie W. Radcliffe, and Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C. Fry, and S. A. Buchanan, Complainants,

vs.

THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS (Appellants), and Others, Defendants.

This cause having been brought to this court by appeal from the circuit court for the county of Wayne, in chancery, and having been argued by counsel and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the circuit court for the county of Wayne, in chancery, be, and the same is hereby, reversed, vacated, and held for naught, and the bill of complaint dismissed; and it is further ordered, adjudged, and decreed that the appellants do recover of and from the complainants their costs of both courts, to be taxed.

62 STATE OF MICHIGAN:

Supreme Court.

CASS FARM COMPANY, LIMITED, ET AL., Appellees,

vs.

CITY OF DETROIT ET AL., Appellants.

Now come the said complainants and appellees and respectfully move the court that a rehearing be granted in the above-entitled cause for the following reasons, to wit:

1. Because complainants believe that the court erred in holding "Whether there was a compliance with the ordinance or not, no one being harmed, the proceeding will not be set aside for that reason."

2. Because complainants believe that the ruling aforesaid is unconstitutional and void for the reason that it deprives the complainants of property without due process of law.

3. Because complainants believe that the court erred in holding that "under the statute creating the Board of Public Works, the details relating to the matter of public improvements rest with the board."

RUSSEL & CAMPBELL,
Solicitors for Complainants.

(Endorsed:) Filed June 27, 1900. Chas. C. Hopkins, clerk.

63 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the third day of July, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE CASS FARM COMPANY, LIMITED, and Others
vs.
THE CITY OF DETROIT and Others.

In this cause a motion for a rehearing is duly submitted.

64 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the sixteenth day of October, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE CASS FARM IMPROVEMENT COMPANY, LIMITED, and Others, Complainants,
vs.
THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS, and Others, Defendants.

The motion for a rehearing heretofore submitted herein, having been duly considered by the court, is hereby denied with costs to the defendants.

65 STATE OF MICHIGAN:

Supreme Court.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, Jessie W. Radcliffe, Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C. Fry, and S. A. Buchanan, Complainants and Appellees,

vs.

THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company, Defendants and Appellants.

It is hereby stipulated in the foregoing cause by the respective parties thereto, through their solicitors, that Exhibit "A," beginning on page 10 of the printed Record in this cause; Exhibit "B," on page 30 of said printed Record; Exhibit "C," on page 32 of said printed Record, and Exhibit "D," beginning at page 33 and extending to page 62 of said printed Record, are true copies of the said exhibits as originally used in evidence in said cause on the hearing thereof in the circuit court for the county of Wayne, in chancery, and that the said printed copies thereof, as contained in said printed record, shall stand in lieu of the said originals in this court.

It is further stipulated that sections 34, 35, 36, and 37 of chapter 11 of the charter of the city of Detroit were duly in evidence on the hearing of said cause, and that Exhibit "A," attached to this stipulation, is a true copy of the said sections so in evidence.

66 It is further stipulated that sections 2, 3, 4, 5, 6, 7, and 8 of chapter 32 of the Revised Ordinances of the City of Detroit were duly in evidence on the hearing of said cause, and that Exhibit "B," attached to this stipulation, is a true copy of the said sections so in evidence.

RUSSEL & CAMPBELL,
Solicitors for Complainants and Appellees.

TIMOTHY E. TARSNEY,
Solicitor for City of Detroit, Board of Public Works, D. W. H. Moreland, James W. Millen, and H. Kallman, Defendants and Appellants.

EDWIN F. CONELY,
Solicitor for Otto E. C. Guelich, Defendant and Appellant.

JNO. J. SPEED,
Solicitor for Alcatraz Asphalt Paving Company, Defendant and Appellant.

Endorsed: Filed Dec. 6, 1900. Chas. C. Hopkins, clerk.

67 EXHIBIT "A."

Charter of the City of Detroit, Chapter 17.

SEC. 34. For the purpose of such assessment, the lots and parcels of real estate situated on said street, and fronting the portion thereof ordered to be improved, shall constitute one local assessment district, unless the common council, with a view to make the assessment more equal and just, shall subdivide the same into two or more assessment districts. Such subdivision, if made, must be done before asking for bids for the work; and in no case shall a city block be divided in making such division. The work for such local assessment district shall be bid for and let separately, and such bidding and letting shall show:

First. The cost of all paving and grading, except that of the intersection of the cross-streets and alleys, the cost of the cross-walks at such intersections, and the cost of repaving.

Second. The cost of the paving and grading of each portion of the street included within the lines of intersection of any cross-street and alleys.

Third. The cost of the cross-walks at such intersections: Provided, that in case where a side street merely opens upon and does not extend across the street to be paved, the space formed by extending the lines of the former street to the middle of the latter street shall, for the purpose of this act, be treated as the spaces formed by the intersection of cross-streets. All necessary platforms and curbings shall, for the purpose of such assessment, be deemed to be included within the term paving. (As amended by act approved June 24, 1887.)

SEC. 35. The cost and expense of such improvement, except so much thereof as shall be for the work within the lines of intersection of cross-streets and alleys, and for the cross-walks at such intersections, and for repaving streets, avenues and highways, shall be assessed ratably, according to their extent of front on the lots, parts of lots, or parcels of real estate directly fronting on
68 and within the local assessment district; provided, that if the assessment made on any such lot, or other parcel of land shall, by reason of its triangular or other irregular shape, seem to the common council to be inequitable, said council may direct a just portion of such assessment to be paid from the general road fund. The cost of the work within the lines of the intersection of cross-streets, and also the cost of the cross-walks, shall be paid out of the general road fund. The cost of all repaving of streets, avenues and highways of the city shall be paid out of the repaving fund. The word "front" as used in this act, shall be construed to mean that part of the lot or other parcel of land which directly abuts on that part of the street to be improved. (As amended by act approved June 24, 1887.)

SEC. 36. Whenever in the improvement of a street as aforesaid, any land or real estate which has not been duly platted into city

blocks, or lots, shall be required to be assessed to pay any part of the cost of such improvement, the council shall designate such part or parts thereof for such assessments, as shall correspond as near as practicable to the portion of the block or blocks nearest adjacent thereto, subject to like assessment, and the part or parts so designated shall be assessed as near as may be, in the manner herein provided for the assessment of lots.

SEC. 37. The board of assessors shall, when necessary, proceed to make out a list of all the lots or parcels of real estate, constituting a local assessment district as aforesaid, with the name of the owner or occupant of each lot or parcel of real estate, so far as said board can ascertain the same, and also the length of front of each lot or parcel of real estate fronting directly on such improvement. Such board shall then assess the cost and expenses of the work, chargeable as aforesaid upon the property in said list, ratable upon the several lots and parcels of real estate according to the length of front thereof. When the assessment-roll is thus completed, said board shall give
69 notice, by at least five publications in the city paper, that such roll is completed, and will remain in their office for twelve days from the first publication of said notice, for the inspection of all concerned. At the expiration of said twelve days, said board shall, after any needful revision and correction of such roll, sign the same and report it to the common council. Said council may then confirm the same, or may, when it shall deem necessary, refer the same back to said board for further revision or corrections. And when the same shall be corrected to the satisfaction of said council, it shall, by resolution, confirm the same. After such confirmation such assessment shall constitute a lien, until paid, upon said lots or parcels of real estate, and shall be collected in such manner as may be authorized by law.

70 EXHIBIT "B."

Revised Ordinances of the City of Detroit, Chapter 32.

SEC. 1. Streets, or parts thereof, may be ordered to be graded and paved, by resolution of the common council, on motion of any member thereof, at a total cost to be expended in any one year not exceeding $200,000. (As amended December 30, 1889.)

SEC. 2. Streets, or parts thereof, may also be ordered to be graded and paved, by resolution of the common council, on petition of parties owning a majority of property fronting on the line of such street, or the part thereof proposed to be paved. Such primary petition shall pray generally that the street, or a specified part thereof, be graded and paved; and the preference of the petitioners, or other parties interested, as to the kind of pavement they desire, may be shown by subsequent petition.

SEC. 3. When a street, or part thereof, is ordered to be graded and paved, the resolution shall declare generally that it is ordered that the street, within specified limits, be graded and paved, and shall

direct what kind of pavement may be advertised for, and that for the purpose of assessment to defray the expense of such improvement, the lots and parcels of real estate situated upon such street, and fronting on the portion thereof ordered to be improved, shall constitute a local assessment district; or two or more assessment districts may be thus established, of not less extent that one block each, in the discretion of the council.

SEC. 4. The city engineer, upon the passage of the resolution establishing a local assessment district, as provided in section 3, shall forthwith proceed to ascertain the quantities of work and material requisite to the improvement so ordered, and to estimate and apportion the expense of advertising and blanks, and of inspection of the work during its progress, and shall make a report of the same in duplicate, over his signature, as near as conveniently may be, according to form "A," hereto attached, and deliver one to the
71 assessor and one to the board of public works.

Form A.

(For the city engineer to report quantities to the board of public works and assessor.)

OFFICE OF THE CITY ENGINEER,
DETROIT, —— —, 18—.

Quantities for grading, paving, etc., —— from the —— line of —— to the —— line of ——, exclusive of the quantities within the line of the cross-streets and alleys.

Quantities.	Description of work.
Cubic yards.....	Excavation.....
Lineal feet	Curbstone.....
Square yards.....	Paving.....

	Dollars.	Cents.
Proportion of cost of advertising and blanks to be paid by tax.....		
Proportion of inspector's compensation to be paid by tax.....		

For the City.

The quantities within the lines of the intersections of the cross-streets and alleys and the cross-walks within such intersections.

Quantities.	Description of work.
Cubic yards.....	Excavation.....
Lineal feet.....	Curbstone.....
Square yards.....	Paving.....
Square feet.....	Stone culvert platform.....
Square feet.....	Wooden " " .....
Square feet.....	Rec'g basin.....
.....	.....
.....	.....
Square feet.....	Cross-walks.....

	Dollars.	Cents.
City's proportion of cost of advertising and blanks..		
City's proportion of inspector's compensation.....		

72 I hereby certify that the above quantities and estimates are correct.

_____,
City Engineer.

SEC. 5. It shall be the duty of the board of public works, as soon as they receive the report of the engineer, in section 4 above provided for, to proceed to advertise fifteen days, unless otherwise ordered by resolution of the common council, in the official city paper, for bids for the making of such improvements, with the kind of pav-ments they shall have been directed to advertise for by the council, and as required by the city charter. Such advertisement shall specify a time and place when and where such bids shall be opened; at which time and place such bids shall be opened by the board of public works, in the presence of such persons as shall choose to attend; and the board shall then report to the council all the bids received for each kind of pavement advertised for, designating the lowest responsible bidder. (As amended July 14, 1884.)

SEC. 6. Upon presentation of the report of the board of public works, in section 5 above provided, the common council may, by resolution, direct said board to contract with such of the lowest responsible bidders reported by the board, as it shall see fit; or direct further advertisement for the same, or different kinds of pavement, in its discretion; and then direct said board to contract with such

lowest bidder, for such kind of pavement as is deemed expedient to adopt for the improvement.

SEC. 7. Upon the passage of the resolution in section 6 above provided, the board of public works shall forthwith proceed to enter into a contract with the party designated therein, and take sufficient security for its faithful performance. Such contract shall, among other things, provide:

1. That the city shall pay for grading and paving the interior spaces at the intersection of cross-streets and alleys, and for the cross-walks within the limits of the contemplated improvements, when the same shall have been completed according to the contract at either crossing.

73 2. That the contractors shall be paid for the remainder of the improvement by bonds to be issued upon the faith and credit of the city for the cost of paving such remaining portion of the improvement or the proceeds of said bonds, should they be purchased by the sinking-fund commissioners, in accordance with the provisions of sections 42 and 43 of chapter 11, of the charter of the city of Detroit, as amended May 4, 1893.

3. That the contractors shall follow the direction of the inspector of pavement as to the manner of doing the work and abide his decision as to the quality of the material to be used in the same, where questions arise within the specifications of the contract as to the compliance therewith; subject only to appeal to the decision of the comptroller and chairman of the committee on streets in behalf of the contractors, whose decision upon such appeal shall be final, and the work be stopped at the point of question, till the requirements of such decision are complied with.

4. Such contract shall contain such other provisions, usual in such contract, as the board of public works shall deem necessary and proper and for the interest of the city, and as are required by the ordinances and charter; and when such contract is duly executed the same shall be reported by the board of public works to the council for confirmation, and the council may either confirm or reject the same or require such additional provisions inserted as shall to it seem necessary, and after the same is amended and executed may confirm the same. (As amended June 7, 1893.)

74 UNITED STATES OF AMERICA, *ss:*

To City of Detroit, the Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and the Alcatraz Paving Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Michigan, wherein Cass Farm Company, Limited; J. O. Harris, Bryant Walker, Jessie W. Radcliffe, Bryant Walker, administrator of the estate of Joseph A. Moross, deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C.

Fry, and S. A. Buchanan are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert M. Montgomery, chief justice of the supreme court of Michigan, this fifth day of November, in the year of our Lord one thousand nine hundred.

ROBERT M. MONTGOMERY,
Chief Justice of the Supreme Court of Michigan.

[Endorsed:] Supreme Court of United States. Cass Farm Company, Limited, *et al. vs.* City of Detroit *et al.* Citation. Filed Nov. 9, 1900. Chas. C. Hopkins, clerk. H. M. Campbell, of counsel for plaintiffs in error, 604 Union Trust building, Detroit, Michigan.

We, the undersigned, accept service of the within citation.

EDWIN F. CONELY,
Counsel for Def't Otto E. C. Guelich.
J. J. SPEED,
Counsel for Def't Alcatraz Asphalt Paving Co.
T. E. TARSNEY,
Counsel for Def'ts City of Detroit, Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen.

75 *Bond.*

Know all men by these presents that we, Cass Farm Company, Limited, as principal, and Henry B. Ledyard and Henry Russel, as sureties, are held and firmly bound unto City of Detroit, Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company in the full and just sum of two hundred fifty ($250.00) dollars, to be paid to the said City of Detroit, Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this ninth day of November, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court of the State of Michigan, in a suit depending in said court between Cass Farm Company, Limited; J. O. Harris, Bryant Walker, Jessie W. Radcliffe, Bryant Walker, administrator of the estate of Joseph A. Moross, deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C. Frey, and S. A. Buchanan, complainants, and The City of Detroit, The Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Paving Company, defendants, a decree was rendered against the said com-

plaintants, and the said complainants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said City of Detroit, The Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Paving Company, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Cass Farm Company, Limited; J. O. Harris, Bryant Walker,
76 Jessie W. Radcliffe, Bryant Walker, administrator of the estate of Joseph A. Moross, deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C. Frey, and S. A. Buchanan shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CASS FARM COMPANY, LIMITED.
H. M. CAMPBELL, *Treasurer.*
H. B. LEDYARD.
HENRY RUSSEL.

Sealed and delivered in presence of—
CHARLES H. CAMPBELL.
WILLIAM SCOTT.

Approved by—

R. M. MONTGOMERY,
Chief Justice of the Supreme Court of Michigan.

77 Supreme Court of the United States, October Term, 1901.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, Bryant Walker, Jessie W. Radcliffe, Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C. Fry, and S. A. Buchanan, Plaintiffs in Error, *vs.* THE CITY OF DETROIT, THE BOARD OF Public Works, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company, Defendants in Error.	Error to the Supreme Court of the State of Michigan.

And now come the plaintiffs in error in this cause, by Russel & Campbell, their attorneys, and say that in the record, proceedings, and decree entered in this cause there is manifest error in this:

1. That the said supreme court of the State of Michigan erred in not declaring sections 34, 35, 36, and 37 of chapter 11 of the charter of the city of Detroit, which provide that property fronting on the

portion of a street ordered to be paved constitutes the legal assessment district, and directing that the board of assessors are required to assess the cost of the improvement against such property ratably according to frontage, to be void, said provisions being in violation of the fourteenth amendment to the Constitution of the United States.

2. That said supreme court of the State of Michigan erred in not declaring sections 2, 3, 4, 5, 6, 7, and 8 of chapter 32 of the Revised Ordinances of the City of Detroit, which provide for the assessment of the cost of paving of streets against the abutting property owners according to the front foot on said street, to be void, said provisions being in violation of the fourteenth amendment to the Constitution of the United States.

RUSSEL & CAMPBELL,
Att'ys for Plaintiffs in Error.
HENRY M. CAMPBELL,
Of Counsel.

78 STATE OF MICHIGAN, } *ss:*
County of Wayne, }

Henry Ledyard, being duly sworn, deposes and says that on the 19th day of November, 1900, he served a copy of the within assignment of errors upon Timothy E. Tarsney by presenting it to him in person; a second copy of said assignment of errors upon John J. Speed by delivering it to the clerk in charge of his office, and a third copy of said assignment of errors upon Edwin F. Conely by delivering it to the clerk in charge of his office.

HENRY LEDYARD.

Sworn to and subscribed before me this 19th day of November, 1900.

[Seal of William Scott, Notary Public, Wayne County, Mich..]

WILLIAM SCOTT,
Notary Public, Wayne County, Michigan.

78½ [Endorsed:] Original. Supreme Court of the United States. Cass Farm Company, Limited, *et al.*, plaintiffs in error, *vs.* The City of Detroit *et al.*, defendants in error. Plaintiffs' assignment of errors. Filed Nov. 21, 1900. Chas. C. Hopkins, clerk. Russel & Campbell, att'ys for plaintiffs, 604 Union Trust building, Detroit.

79 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Michigan, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had

in the said suit between Cass Farm Company, Limited; J. O. Harris, Bryant Walker, Jessie W. Radcliffe, Bryant Walker, administrator of the estate of Joseph A. Moross, deceased; William Craig, Alice C. Hutton, James Craig, Jun'r, Helen C. Fry, and S. A. Buchanan, complainants, and The City of Detroit, The Board of Public Works of Detroit, D. W. H. Moreland, H. Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construe-
80 tion of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Cass Farm Company, Limited; J. O. Harris, Bryant Walker, Jessie W. Radcliffe, Bryant Walker, administrator of the estate of Joseph A. Moross, deceased; William Craig, Alice C. Hutton, James Craig, Jun'r, Helen C. Fry, and S. A. Buchanan, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifth day of November, in the year of our Lord one thousand nine hundred.

[Seal of the Circuit Court, Eastern District of Michigan.]

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States
for the Eastern District of Michigan.

Allowed by—

R. M. MONTGOMERY,
Chief Justice of the Supreme Court of Michigan.

[Endorsed:] Supreme Court of United States. Cass Farm Company, Limited, *et al. vs.* City of Detroit *et al.* Writ of error. Filed Nov. 9, 1900. Chas. C. Hopkins, clerk.

81 Supreme Court of the State of Michigan.

CASS FARM COMPANY, LIMITED; J. O. HARRIS, BRYANT WALKER, Jessie W. Radcliffe, Bryant Walker, Administrator of the Estate of Joseph A. Moross, Deceased; William Craig, Alice C. Hutton, James Craig, Jr., Helen C. Fry, and S. A. Buchanan, Plaintiffs in Error,

vs.

THE CITY OF DETROIT, THE BOARD OF PUBLIC WORKS, D. W. H. Moreland, H Kallman, James W. Millen, Otto E. C. Guelich, and The Alcatraz Asphalt Paving Company, Defendants in Error.

STATE OF MICHIGAN, } *ss:*
In Supreme Court, }

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court, as appears of record and on file in —— cause; that I have compared the same with the originals, and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon, a copy of the bond to the adverse party, duly approved, filed with the writ of error, the citation, with proof of service endorsed thereon, and the assignment of errors in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at the city of Lansing, this eighth day of December, A. D. 1900.

[Seal of the Supreme Court of Michigan—Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No., 17,993. Michigan supreme court. Term No., 508. Cass Farm Company (Limited), J. O. Harris, *et al.*, plaintiffs in error, *vs.* The City of Detroit, The Board of Public Works of Detroit, *et al.* Filed December 13, 1900.